

# **NEW HAMPSHIRE ELECTION PROCEDURE MANUAL: 2006-2007**

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# **INTRODUCTION BY THE SECRETARY OF STATE**

Dear Election Official:

This manual is designed to help you carry out the important job of conducting fair and impartial elections in your community. One cautionary note is needed. This handbook is not law. It is an attempt to make the election process more readily understandable. Every attempt has been made to keep the language and structure of this manual as non-technical as possible. Any interpretation questions should still be directed to your local legal counsel, the secretary of state, or the attorney general.

The manual is organized into sections, each corresponding to different phases of the election process. It includes the duties of various election officials and issues of special interest. While every official will benefit from studying the entire manual, a review of the section dedicated to the office you hold will provide an overview of your election-related duties.

New Hampshire has now nearly completed implementing The Help America Vote Act of 2002 ("HAVA"). For the first time ElectionNet, the Statewide Voter Registration System ("SVRS"), will be the source of the checklist for the State Primary and General Elections. Voters with disabilities will also, for the first time, be able to make use of the Accessible Voting System, allowing most voters with disabilities to vote privately and independently using a telephone located in a voting booth at your polling place. I want to offer my sincere thanks and congratulations to the election officials of the State of New Hampshire for their dedication and efforts in successfully implementing HAVA.

It is my hope that this arrangement will provide a handy guide to which you may refer as questions arise in the election process. As always, the office of the secretary of state stands ready to help you in any way it can.

Sincerely,

William M. Gardner

## **PREFACE AND ACKNOWLEDGMENTS**

This document is the Election Procedures Manual prepared by the Secretary of State with the advice and approval of the Attorney General pursuant to RSA 652:22. This 2006 revision of the Election Procedures Manual reflects changes to the election laws made in 2005 and 2006. New sections address the use of the Statewide Voter Registration System (“SVRS”), the Accessible Voting System (“AVS”), and an expanded section has been added on election night ballot count reconciliation. First the election process is described from start to finish. Second the duties of each election official are described. Detailed information is then provided on topics of special interest to local election officials. Finally copies of forms and sample notices are provided. There is an extensive index at the back of the Manual to assist readers in quickly locating answers to questions. The work done in the past by the volunteers from the City and Town Clerk’s Association continues to serve as the foundation upon which this manual has been developed.

While this document reflects a concentrated effort by the Secretary of State’s Office and the Attorney General’s Office to summarize and organize the election laws, it is not a law book. The Election Procedures Manual is meant to be an authoritative reference resource and a learning tool; it is not a substitute for the statute book or for legal advice. Court decisions and changes to the statutes made between printings of the Manual may change the election laws. Whenever uncertainty exists as to what action should be taken, we will make our best effort to assist you and you should consult your local legal counsel.

The Attorney General’s Office is charged with enforcing the election laws and serves the Secretary of State as legal counsel. In the event that the acts of a local government election official become the subject of a lawsuit, however, the legal counsel for that community will be defending the official and his or her community in Court. If disagreement exists as to proper procedure, it is recommended that local election officials consult with the jurisdiction’s local legal counsel before acting.

This Election Procedures Manual will be updated and republished every two years.

The Secretary of State and the Attorney General endeavor to provide effective assistance to local election officials. We thank you for your tireless efforts in conducting elections in your community. The validity and credibility of New Hampshire elections rely on your willingness to learn and properly execute the election laws. Voting is the most fundamental right in a democracy because it is through voting that citizens protect all other rights by carefully selecting the public servants who guide and direct our self governance. You are the first and primary protectors of that most fundamental right, the right to cast a meaningful vote.

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## I. VOTER REGISTRATION

The purpose of voter registration in New Hampshire is to allow qualified citizens the right to vote. People who wish to vote in New Hampshire must register in their local community.

The checklist contains the name of every qualified voter who has registered in a given community. The checklist is prepared and maintained by the supervisors of the checklist or board of registrars in each town and city in the state. The board of supervisors or registrars is responsible for all additions, removals or changes to the checklist.

The board in each town or city is composed of three members, each serving a 6-year term unless otherwise set by a city charter. Supervisors and registrars are elected at city and town elections every other year unless otherwise set by a city charter. RSA 41:46-a.

### **ELECTIONET, THE STATEWIDE VOTER REGISTRATION SYSTEM ("SVRS")**

Federal law requires that registration records on all voters in the state be entered into a single statewide computerized voter registration system. All cities and towns are currently using a single system named ElectionNet, or SVRS. Checklists for state-federal primaries and general elections and all municipal elections shall be produced from ElectionNet. RSA 654:45.

### **TOWN AND CITY CLERKS TO ACCEPT APPLICATIONS**

Town and city clerks are required to accept the applications of those people who wish to become registered voters. However, only the supervisors can make the final decision to add a name to the checklist. All applications received by the clerk should be forwarded to the supervisors for consideration at the supervisors' next meeting. RSA 654:8-9.

## **DATA ENTRY INTO ELECTIONET (SVRS)**

Upon receipt of new voter registrations, supervisors of the checklist or clerks should ensure that information on new registrants is entered into ElectionNet (SVRS) in a timely manner. The checklist data in SVRS must be updated no later than the session of the Supervisors of the Checklist required 10 days before any election and again as soon as practical after each election. RSA 654:12; RSA 659:13.

## **SESSIONS OF SUPERVISORS**

**Election Day Registration** - Any person may register to vote with the supervisors of the checklist at any **election** (i.e., primary and general elections, town, city, school district and village district elections, including village district meetings where officials are elected without use of an official ballot). Applicants must meet all the qualifications required by RSA 654:12, as judged by the supervisors. RSA 654:7-a.

For the purposes of this section "election" refers to any voting at which absentee ballots are provided. "Meeting" refers to the deliberative session of the town, school, or village district meeting.

**State Elections** - The supervisors are required to hold one session prior to any state election (state primary, presidential primary, or general election). The session must be held on the Saturday 10 days before the election. This session must be held as a minimum requirement between 11 a.m. and 11:30 a.m. and may be for additional hours at the discretion of the supervisors. Except for the provisions relative to election day registration, no additions or corrections may be made to the checklist after that session is over. RSA 654:28.

**Holiday Weekend** - If the session of the supervisors which is to be held on the Saturday 10 days before the election falls on a holiday weekend (i.e. Labor Day), then the supervisors must hold that session on the Tuesday 7 days

before the election between 7:00 p.m. and 7:30 p.m. and may be for additional hours at the discretion of the supervisors. RSA 654:27; RSA 654:28.

**Primary Elections** - In addition to election day registration and the session required above, the supervisors must also hold one session for additions and corrections to the checklist prior to the filing period for state offices or the presidential primary. Before the presidential primary, the session shall be on the Friday preceding the first day of the filing period between 7:00 p.m. and 7:30 p.m. The Secretary of State determines and will announce the dates of the filing period for the Presidential Primary. RSA 655:47, II. Before the state primary election, the session must be on the Tuesday before the first Wednesday in June (that is, the day before the filing period opens) (June 6, 2006) between 7:00 p.m. and 7:30 p.m. At any session the supervisors may extend the session to end at a later time. RSA 654:32.

**Local Elections** - For all town, city, village district and school district elections, supervisors must hold a session on the Saturday 10 days prior to the election and on the day immediately prior to the first day of the filing period. In towns operating under RSA 40:13, known as the SB2 form of annual meeting, the supervisors' session shall be held on the Saturday 6 - 13 days prior to the deliberative session. Supervisors must register voters on election day of local elections. RSA 669:5; RSA 44:5; RSA 670:3.

## NO RESTRICTIONS ON OTHER MEETINGS

Supervisors should hold as many meetings as necessary to allow citizens in the community an opportunity to register or change party affiliation. In addition to the required sessions, supervisors may meet at any time prior to the final pre-election session required by law, as long as they post and publish notice of the meeting. RSA 654:27; RSA 654:32. No additions or corrections to the checklist shall be made between the Saturday session (or the Tuesday session if Saturday falls on a holiday weekend) and election day. RSA 654:28. Qualified individuals may register on election day.

Supervisors should meet and resolve pending additions, pending removals, and removals due to voters re-registering in another NH city/town – which appear in System Reminders of ElectionNet (SVRS) - prior to providing copies of checklists to the general public.

## POSTING CHECKLISTS; NOTICES OF SESSIONS

No later than the fourth Tuesday before any state election, the supervisors shall post a current checklist at the town or city clerk's office or at town hall. At least 10 days prior to a session for alteration of party affiliation before a primary, the supervisors shall post a current checklist showing party affiliations at the town or city clerk's office or at town hall. Each posted checklist shall state the date, hour and place of the upcoming session(s) for checklist additions or corrections. Notice of any upcoming session must also be published in a newspaper of general circulation in the town or city at least 7 days prior to the session. Reconvening of a recessed session does not require the publication of additional notice. RSA 654:26; RSA 654:27; RSA 654:33.

Supervisors may meet at other times to conduct regular maintenance of the checklist. Supervisors must provide notice of meetings at which voters will be officially added to or removed from the checklist. Work by one or more Supervisors or their staff to enter new applicants into pending status or to otherwise perform ElectionNet (SVRS) maintenance which does not officially change any voter's status need not be noticed.

Notice of meetings where voters will be added to or removed from the checklist which are in addition to those required by statute as described above, should be made by placing two notices in a manner consistent with the Right-to-Know law – with at least two notices posted 48 hours before the meeting. For example, one notice might be placed on the town hall bulletin board, and another might be placed on the town's web site. Notices of the meetings required by statute must

comply with the notice requirements described above.

## **CERTIFICATION AND CORRECTION OF POSTED CHECKLIST**

On each posted checklist, the supervisors shall subscribe the following oath: "We, the supervisors of the checklist of the town (or ward) of \_\_\_\_\_ do solemnly swear that, according to our best knowledge, the within list contains \_\_\_\_\_ (number) names of those persons only who are, by actual domicile, legal voters in said town (or ward)". RSA 654:29.

Except for the additions made on election days, any additions, removals or corrections shall be made to the previously posted checklist on or before midnight on the succeeding Friday either by additions or corrections to said checklist or by posting a new corrected checklist. Notice of such additions, removals or corrections to the checklist shall also be given to the town or city clerk. RSA 654:28.

## **THE REGISTRATION FORM**

Each person desiring to register to vote must fill out a standard Voter Registration Form. Supervisors should make certain that they have a sufficient supply of these forms for themselves and the town or city clerk. Information regarding the printing of these forms may be obtained through the Secretary of State's Office. RSA 654:7. See the voter registration form at page 166.

## **DETERMINING AN APPLICANT'S QUALIFICATIONS**

When the applicant has completed the voter registration form, the clerk or the supervisors must determine whether the applicant is legally qualified to vote in the community. RSA 654:12.

a. **IDENTITY:** A person must prove his or her identity to establish that the evidence used to prove age, citizenship, and domicile relate to the applicant.

b. **AGE:** A person must be 18 years of age (a person may register to vote when he or she is age 17, as long as they will be 18 years old by the day of the next election).

c. **CITIZENSHIP:** A person must be a citizen of the United States. Naturalization papers may be requested of a naturalized citizen.

d. **DOMICILE:** A person must have a domicile in the town or ward in which he or she seeks to register. Supervisors may require proof of domicile in the form of an affidavit declaring that the applicant has a domicile in the town or ward in which he or she desires to vote.

The determination of an applicant's qualifications to vote is a judgment which the supervisors must make. An applicant must be registered unless a majority of the Supervisors agree that it is more likely than not that the applicant is not qualified. The Secretary of State will be happy to clarify what these qualifications are, but cannot judge for the supervisors which applicants should or should not be registered.

The applicant must prove his or her identity during the application process. RSA 654:12, III. A person who has in his or her immediate possession a New Hampshire driver's license, Armed Services identification, other photo identification issued by the United States government, a photo driver's license issued by any state or the federal government, a United States passport, or photo identification issued by local or state government must present that identification. If the person owns such a document, but does not have it in his or her immediate possession he or she is entitled to prove his or her identity by any of the following means, generally in the order in which they are presented. This means that, if going out to the car is a quicker alternative to any of the following alternatives, a person may be asked to go out to their car at the clerk's office or polling place to

retrieve one of these forms of proof of identification, but an election official cannot require a person who can prove his or her identity by other means to drive home or elsewhere to retrieve one of these documents.

A person who does not have an approved photo identification with him or her may establish identity through any reasonable means, including but not limited to:

- Other forms of photo identification judged to be legitimate and trustworthy by the Supervisors, such as ID badges issued by hospitals, employers, or educational institutions;
- Verification of the person's identity by another person registered as a voter and known to the supervisor or clerk;
- Other reasonable means as determined by the Supervisors.

As a last resort, a person may prove identity by completing the affidavit required of a challenged voter. RSA 654:12, III.

## **NURSING HOME RESIDENTS**

Residents of a Nursing Home or similar facility who no longer possess the usual forms of identification, may prove their identity through verification of their identity by the administrator of the facility or his or her designee. If an applicant for voter registration proves his or her identity by having it verified by a nursing home administrator, that registration will be treated in the same manner as would a registration where the applicant proved his or her identity with a qualified photo identification. RSA 654:12.

## **PERSONS WHO REGISTER ON ELECTION DAY WITHOUT PHOTO IDENTIFICATION**

After a general election the Secretary of State is required to conduct a follow-up inquiry of any election day registrant who has never voted in New Hampshire and who does not provide an approved photo identification as provided in RSA 654:12, but

proves his or her identity through some other reasonable means. If an election day registrant has already been previously registered elsewhere in New Hampshire, this new requirement does not apply.

When an election day registrant who has never voted in New Hampshire registers without providing an approved photo identification, the election official receiving the voter registration form must note on that form in the "For Official Use" box, that the election day registrant registered without using an approved photo identification. As soon as possible thereafter, the election official should log onto ElectionNet and select Activities – Voter Registration – Add/Change Voter – Activities Search, click State Search button. (Always look to see if the voter can be found in ElectionNet.) After the list of possible matches is displayed, if no matches are found, click the New Voter button (since this law does not apply to those already in ElectionNet (SVRS) – Registration Card, and enter new voter information. Navigate down the screen to the "Other Information" section, click on the dropdown arrow under "Type of Registration," and click "Election day registration." In the same section, click on the dropdown arrow entitled "Form of ID" and select either "Other photo ID" or "Other Non-Photo ID." (All other options represent approved photo IDs under RSA 654:12.)

If the data entry of new voters is completed after election day, election officials entering new voter information should be careful to backdate the registration date to the election date.

Within 90 days after the general election, the Secretary of State is required to send each person who registered on election day without using an approved photo identification a letter which welcomes the individual as a new voter, and also requests that the individual notify the Attorney General immediately if they did not register and vote on election day.

If the identity verification letter is returned as undeliverable by the United States Postal Service,

the Attorney General will be notified. If any individual reports that someone else used his or her name to register and vote on election day, or if mail to a new voter is undeliverable at the address given on the Voter Registration Form, the Attorney General will investigate whether voting fraud occurred.

## IN-STATE TRANSFER OF REGISTRATION – ELECTIONET

If ElectionNet is in use when a person is registering and the election official can determine that the person applying for registration as a voter is currently registered as a voter in another New Hampshire town or ward, the applicant does not have to re-prove age or citizenship. The applicant should still complete a Voter Registration Form and prove his or her identity and domicile. Because the voter already proved his or her age and citizenship when he or she registered to vote in the other town or ward, the law now does not require that the voter prove those qualifications a second time. This change to the law is intended to make the voter registration process quicker and easier for both the voter and the election official. This waiver of the requirement for proof of age and citizenship applies only when the election official is able to check ElectionNet as the person is registering. RSA 654:12, IV.

Supervisors should require an applicant to prove citizenship by presenting any one of the following:

- birth certificate
- passport
- naturalization papers
- citizenship affidavit, or
- any other reasonable document establishing that the applicant is a United States citizen.

Submission by the applicant of any one of the above documents is sufficient for compliance with this section and no further document can be required by the supervisors in this category. RSA 654:12.

The citizenship affidavit must be in the form shown on page 131.

The supervisors may also request any reasonable document which establishes that the applicant will be 18 years of age or older by election day and any reasonable documentation which indicates that the applicant has a domicile in the town, city or ward in which he desires to vote, *or an affidavit* declaring that the applicant has a domicile in the town, city or ward in which he desires to vote. RSA 654:12. The domicile affidavit must be in the form shown on page 132.

The determination of one's domicile is a question of fact: whether the applicant can prove that for the town or ward claimed as domicile, more than any other place, the applicant has established a physical presence and **manifests** an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. A voter's intention to reside and his or her actual physical presence must coincide. The mere fact that someone intends to make a town his domicile is insufficient. The person must actually have a physical presence there. A person can have only one domicile for voting purposes. RSA 654:1.

Domicile is discussed further starting at page 68.

## DECISION TO BE MADE BY THE SUPERVISORS OF THE CHECKLIST

The clerk should provide any completed voter registration forms to the supervisors prior to the supervisors' next session. The supervisors should issue written guidelines to the clerk describing what evidence the supervisors accept as proof of identity, citizenship, age, or domicile. It is up to a majority vote of the supervisors to make the final determination of whether to add the applicant's name to the checklist. RSA 654:11.

The supervisors should consider any applications received from the clerk at the first meeting held after the applications are received. If they vote by

majority that an applicant is qualified, they should add his or her name to the checklist. The original copy of the form and any affidavits used should be retained by the supervisors for their records. A copy should be mailed to the supervisors of the checklist, in care of the town or city clerk, of the city or town of the applicant's last voting address if that address is in the state of Vermont, Maine, Massachusetts, Connecticut or Rhode Island. RSA 654:11; RSA 654:3. The process is conducted automatically within New Hampshire using ElectionNet, eliminating the need to send such notices within New Hampshire.

If the applicant is deemed not to be qualified as a voter, the supervisors must inform him or her in writing within 7 days of their decision, stating the reason for the denial. The supervisors shall write the word "rejected" on the form and preserve it. RSA 654:13, and record this fact in ElectionNet (SVRS) if the voter has already been entered in ElectionNet.

The supervisors should be aware that any citizen may appeal the supervisors' denial to the New Hampshire Superior Court. RSA 654:42

## **VOTER REGISTRATION FORM - PARTIALLY PUBLIC INFORMATION**

The Voter Registration Form serves as the basis of a data file of registered voters in the town or ward. This file is, in part, a public record. However, public information includes only the voter's name, SVRS ID number, physical street address, mailing address, town or city name, party affiliation, if any, and whether or not the person voted in past elections. RSA 654:25; RSA 654:31; RSA 654:31-a., RSA 659:102; U.S. Public Law 107-252. The remaining information on the Voter Registration Form is not subject to the Right-To-Know law, RSA 91-A. This information may be disclosed by election officials if disclosure is necessary to resolve a challenge to the voter. RSA 654:31-a. Otherwise, it is a misdemeanor to disclose non-public information from a voter's registration record. RSA 654:31.

## **ABSENTEE VOTER REGISTRATION**

Any person who is legally qualified to vote in a town or city except that his name does not appear on the checklist, who is unable to attend a session of the supervisors or to submit a registration to the town or city clerk by reason of having a physical disability, religious practice or because he or she is temporarily absent, may register to vote using a special Absentee Voter Registration Form. RSA 654:16.

New Hampshire is exempt from the federal "Motor Voter" law, so if a federal motor voter postcard registration form is received from someone who is absent from town, or disabled, the clerk or the supervisors should send the applicant the New Hampshire Absentee Voter Registration Form as well as the standard Voter Registration Form. If the applicant is not absent from town, prohibited by religious practice from registering in person or is not disabled, he or she can be notified to come to the clerk's office or a session of the supervisors to register in person.

Absentee Voter Registration Forms may be sent out by the town or city clerk to anyone who requests them. When sending the form, the clerk must be sure to include a Voter Registration Form as well. Completed applications are returned to the clerk who should turn them over to the supervisors of the checklist. RSA 654:17-19.

## **FEDERAL OVERSEAS ABSENTEE VOTERS**

This is a special class of voters created originally by federal law and now included in our state law. A Federal Overseas Voter is not a regular absentee voter or an armed services voter who is simply overseas. A Federal Overseas Voter is a person **living outside the United States who no longer maintains a domicile in New Hampshire**, but whose last domicile before leaving the United States was in New Hampshire. RSA 654:3.



Federal Overseas Voter Registration Applications may be sent to anyone who requests one or to anyone who seems to fit into this special class. A standard Voter Registration Form should not be sent to avoid confusing the voter with other fully qualified (legally domiciled) voters. Completed applications are to be turned over to the supervisors. **Once registered, a Federal Overseas Voter is eligible to vote for federal offices only.** A special absentee ballot is prepared by the Secretary of State and supplied to clerks for these voters for the state primary and general elections. RSA 654:20; RSA 654:21; RSA 654:22; RSA 654:23.

## SPECIAL ABSENTEE WRITE-IN BALLOT

Any Overseas Citizen or Armed Service Voter who is unable to vote in person due to requirements of military service or due to living in isolated areas outside the United States and Canada, may apply for a special write-in absentee ballot from the clerk, which will be prepared by the Secretary of State. There is a special write-in ballot available for the primary election and for the general election. See sample at page 128. When mailing out absentee ballots to overseas citizens and/or armed service voters use the table provided in this book. RSA 657:10-a

**TABLE FOR SENDING SPECIAL WRITE-IN BALLOTS FOR STATE PRIMARY ELECTION**

<i>If request is made:</i>		OVERSEAS CITIZEN	ARMED SERVICES
1. Prior to July 15:	<i>Send</i>	Special Write-In Ballot (**specific request only)	Special Write-In Ballot (**specific request only)
2. Between July 15 and August 1st:	<i>Send</i>	Overseas Citizens Federal Primary Election Ballot	Overseas Citizens Federal Primary Election Ballot
3. After August 1st:	<i>Send</i>	Overseas Citizens Federal Primary Election Ballot	Regular Absentee Voter Primary Ballot

**TABLE FOR SENDING SPECIAL WRITE-IN BALLOTS FOR STATE GENERAL ELECTION**

<i>If request is made:</i>		OVERSEAS CITIZEN	ARMED SERVICES
1. Prior to Primary:	<i>Send</i>	Special Write-In Ballot (**specific request only)	Special Write-In Ballot (**specific request only)
2. Between Primary and October 1st:	<i>Send</i>	Overseas Citizens Federal General Election Ballot	Overseas Citizens Federal General Election Ballot
3. After October 1st:	<i>Send</i>	Overseas Citizens Federal General Election Ballot	Regular Absentee Voter General Election Ballot

(\*\*If not specifically requested, send Overseas Citizens Federal Election Ballot when available)

Armed Service and Federal Overseas Citizens absentee voters may request an Official Federal Write-in Ballot from the government. These should be accepted by all town and city clerks as official ballots.

## CHECKLIST STANDARDS

The information required by law to be maintained by the supervisors includes:

Completed voter registration form

Checklists in alphabetical order

- Names in full (last name first with notations to designate Federal Overseas Voters)
- Physical Address
- Mailing Address
- Party Affiliation, if any
- Voter Registration Form updated after each election
- Checklist updated after each election

RSA 654:25. RSA 654:31-a.

**If a voter presents a valid protective order pursuant to RSA 173-B:4, or is a participant in**

the address confidentiality program established by RSA 7:46 and requests that no address be maintained on the checklist, the supervisors should mark the public checklist with an entry “Non-Public Voter” followed by a sequential number, i.e. 1 for the first such voter, 2 for the second and so on. The Supervisors must then maintain a separate non-public checklist of these voters. That non-public checklist should have the usual checklist information, but must not be disclosed to anyone other than the Clerk and the Moderator, except as otherwise provided by law. ElectionNet has provisions for identifying voters as non-public. Clerks must automatically send any qualified non-public voter an absentee ballot.

If a voter or a person in the household of the voter is a victim of certain crimes and does not wish to have his or her name or address appear on the checklist, he or she may apply to participate in a confidentiality program through the Attorney General's Office. RSA 7:46.

**More information on this program may be obtained by contacting the Attorney General's Office Victim Assistance Program at 271-1240 or 1-800-300-4500.**

## **CHECKLIST CHANGES: REMOVAL OF NAMES**

Only those persons legally qualified to vote should have their names maintained on a town or city checklist. Inaccurate checklists which list the name of a person who has moved from town, died, become an incarcerated felon, has duplicate voter record, or who has otherwise become ineligible to vote make it easier to commit voting fraud. While there is evidence of this occurring only once in New Hampshire in the recent past, historically in the United States one common form of voting fraud is having people who are not qualified to vote cast ballots using the name of a dead, duplicate or absent person whose name is still listed on the checklist. The public confidence in New Hampshire's election system may be diminished when a voter reviews the checklist, he or she finds the names of people who the voter knows are no

longer alive or no longer qualified to vote. ElectionNet will make the process of keeping the checklist current much easier. The Secretary of State plans to, over time, cooperate with other secretaries of state in exchanging information on voters who have moved and registered in other states. In 2006, the Legislature authorized Supervisors to automatically remove a voter from the checklist if that voter notifies either the United States Post Office or the Department of Safety (driver's license/vehicle registration) that he or she has permanently moved from your town or ward. These steps will significantly reduce the number of names on your checklist of people who are no longer authorized to vote. Provided you keep your checklists accurate by fully utilizing ElectionNet, public confidence in our voting system will benefit from these changes in our law and procedures.

The supervisors should remove the name of any person who relinquishes his U.S. citizenship or domicile in the community (unless he or she remains eligible for a federal ballot only.) A domicile for voting purposes is not lost because a voter is temporarily absent from his home. As long as a voter has a domicile in the town or city, intends to return to that domicile as his home, and does not establish another domicile for voting purposes in another community, that voter's name should remain on the checklist. RSA 654:2.

At least 30 days before removing the name of a voter from the checklist, the supervisors must first send written notice of removal by mail to the voter's last known address. The notice must state the reason considered for removing the name and the time and place where the voter may respond. RSA 654:44. A sample “notice of removal” letter can be found at page 163.

Upon receipt of a report of transfer or a notice in System Reminders of ElectionNet (SVRS) that indicates that a voter has registered to vote in another community, or has permanently moved from the town or ward where registered, the supervisors, unless they have evidence that the notice is more likely than not in error, shall remove that voter's name from the checklist by

approving the removal in System Reminders. A clerk who receives a notice of death must report that fact to the supervisors who shall remove the voter's name from the checklist.

Supervisors shall also either remove a person's name from the checklist or send the person a 30 day notice letter if notice is received from the United States Postal Service or the Department of Safety, directly or through the ElectionNet that the person has permanently moved from the town or ward where he or she is registered to vote. Under the 2006 law, RSA 654:36-b provides:

*If the supervisors of the checklist receive a report from the United States Postal Service or the department of safety directly or as communicated by the secretary of state through the centralized voter registration database that a voter has permanently changed his or her address to another town, city, or state, they shall strike that name from the checklist at the next session for the correction of the checklist. As an alternative, the supervisors of the checklist may first send a 30-day notice letter and then shall remove the name from the checklist if the voter does not respond to that notice.*

If mail is sent to a voter at the mailing address the voter last provided and is returned by the United States Postal Service indicating that the person has moved, this should trigger removal of the person's name from the checklist. The Secretary of State will be obtaining a list of people in the State who have moved from the United States Postal Service and will be sending notice of those moves in ElectionNet, the Statewide Voter Registration System (SVRS). If the Supervisors have reason to believe the notice is in error, then a 30 day letter should be sent to the voter before removal of the voter's name from the checklist.

A "notice of removal" should not be sent to the voter's last known address when removing the name of a voter for whom a report of transfer or report of death has been received. Supervisors should record all paper notices they receive or send so that they may justify their actions in the future, if necessary. RSA 654:36; RSA 654:37; RSA 654:44. When using ElectionNet, notices of moves between New Hampshire cities and towns are automatically sent when the voter moves to a new NH town.

A registered voter may change his or her party affiliation any time the supervisors are in session, except between the first day of the filing period for a state primary or presidential primary up to the day of the primary election. When a voter moves from one New Hampshire town to another, the voter is treated as a new registrant for this purpose and may choose any party affiliation, regardless of the voter's party affiliation where the voter was previously registered.

The supervisors must hold at least one meeting prior to the filing period for the change of party affiliation by registered voters. RSA 654:32.

All city and town clerks are authorized by law to accept changes in party affiliation.

An unaffiliated voter may declare his affiliation at the primary and may vote the ballot of his new party. A voter who has declared an affiliation with a party prior to primary day may only vote in that party's primary. The voter can change parties on primary day, but then is not allowed to vote at all in that primary.

An unaffiliated voter may declare his affiliation at the primary and vote the ballot of his new party AND THEN, after voting, may fill out a card available from the supervisors or sign his or her name on a list of voters prepared for the purpose of recording party changes, to change his or her party status back to unaffiliated.

Any person who is a registered member of a party and votes a ballot of that party at a primary election SHALL NOT fill out a card to change his or her party status to unaffiliated on primary election day. RSA 654:34, III, V.

## **CHECKLIST CHANGES: CHANGE OF ADDRESS**

If the supervisors become aware that a person has moved within his or her community, or that the street name or number has been changed for a voter that has not moved, they must change the

address on the person's voter registration form and in ElectionNet (SVRS).

## PHYSICAL (DOMICILE) ADDRESS FOR EACH VOTER

Supervisors shall ensure that each voter has a domicile address which represents a real location consistent with a recognized addressing formula within the town or ward of the person's domicile. If there is no physical address, the physical street name entered in ElectionNet (SVRS) should correspond to a recognized legal exemption from the physical address requirement. See Frequently Asked Questions supplied in ElectionNet (SVRS) training.

## REMOVAL OF DUPLICATES

Supervisors are obligated to address duplicate voters – voters whose names appear on the checklist in more than one New Hampshire town or city – in a timely manner.

This normally requires that supervisors of the checklist or their designees contact the city or town election officials where duplicate voters have been identified, decide whether the same voter is named on both checklists, and resolve which jurisdiction the voter belongs on.

## CAMPAIGNING

Political advertising used in any election, including local elections, must bear the name and address of some person responsible for the advertising. RSA 664:1; RSA 664:14. The courts have held that a communication is political advertising only if it explicitly advocates the success or defeat of any party, measure, or person at any election. RSA 664:17 the statute controlling the placement of political advertising was amended by the Legislature in 2006:

*advertising shall be removed by the candidate no later than the second Friday following the election unless the election is a primary and the advertising concerns a candidate who is a winner in the primary. Signs shall not be placed on or affixed to utility poles or highway signs. Political advertising may be placed within state-owned rights-of-way as long as the advertising does not obstruct the safe flow of traffic and the advertising is placed with the consent of the owner of the land over which the right-of-way passes. No person shall remove, deface, or knowingly destroy any political advertising which is placed on or affixed to public property or any private property except the owner of the property, persons authorized by the owner of the property, or a law enforcement officer removing improper advertising. Political advertising placed on or affixed to any public property may be removed by state, city, or town maintenance or law enforcement personnel. Political advertising removed prior to election day by state, city, or town maintenance or law enforcement personnel shall be kept for one week at a place designated by the state, city, or town so that the candidate may retrieve the items.*

This new law eliminates the prohibition on placing political advertising prior to the last Friday in June. That provision had been determined to be unenforceable. The new law also allows signs to be placed within a State-owned right-of-way, but only if the owner of the underlying land gives the person erecting the sign permission. The law prohibits removing signs from private property, even unlawfully placed signs, except by the owner or someone authorized by the owner of the property. The law also prohibits removing signs from public property, even unlawfully placed signs, except by law enforcement or state, town, or city maintenance personnel. When public employees remove signs prior to election day, the signs must be kept for one week at a place designated by the municipality so that the candidate may retrieve the signs. RSA 664:17.

*No political advertising shall be placed on or affixed to any public property including highway rights-of-way or private property without the owner's consent. All political*

## **II. PREPARATION FOR ELECTION DAY**

### **A. FILING OF CANDIDATES**

There are separate procedures to be followed by candidates and election officials for filing for office in state elections. Each of these procedures is detailed as follows:

#### **FOR PRESIDENTIAL PRIMARY**

All inquiries regarding filing for the presidential primary should be directed to the Secretary of State.

#### **FOR STATE PRIMARY ELECTION**

Before the opening of the filing period for a state primary election, the Secretary of State will send the “Notice to Voters of State Primary Election” to all city and town clerks. City clerks are to forward these notices to ward clerks. Within 10 days of his or her receipt of this notice, the town or ward clerk shall fill in the information and post the notices in two public places within the town or ward. This notice serves as the warrant for the state primary election. RSA 655:11; RSA 655:12.

#### **QUALIFICATIONS FOR STATE REPRESENTATIVES**

Since candidates for state representative must file with the town or city clerk, the clerks should be aware of the qualifications of this office. Following are the constitutional and statutory requirements for state representative:

##### **Part 2, Article 14, New Hampshire Constitution**

Every member of the house of representatives shall be chosen by ballot; and, for two years, at least, next preceding his election shall have been an inhabitant of this state; shall be, at the time of his election, an inhabitant of the town, ward, place or district he may be chosen to represent and shall cease to represent such town, ward, place, or

district immediately on his ceasing to be qualified as aforesaid.

**RSA 655:8** further provides that “to hold the office of state representative, a person must be at least 18 years of age and must be qualified as provided in Part 2, Article 14 of the state constitution” and then sets forth the language quoted above.

##### **RSA 654:1 Voter; Office Holder**

I. Every inhabitant of the state, having a single established domicile for voting purposes, being a citizen of the United States, of the age provided for in Article 11 of Part First of the Constitution of New Hampshire, shall have a right at any meeting or election, to vote in the town, ward, or unincorporated place in which he or she is domiciled. An inhabitant’s domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. A person has the right to change domicile at any time, however a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.

II. Any elected or appointed official for whom one of the qualifications for his or her position is eligibility to be a voter in the area represented or served shall be considered to have resigned if the official moves his or her domicile so that he or she can no longer qualify to be a voter in the area represented or served. Any vacancy so created shall be filled as prescribed by law.

##### **RSA 654:2 Temporary Absence**

A domicile for voting purposes acquired by any person in any town shall not be interrupted or lost by a temporary absence therefrom with the intention of returning thereto as his or her domicile. Domicile for the purpose of voting as defined in RSA 654:1, once existing, continues to exist until another such domicile is gained. Domicile for purposes of voting is a question of

fact and intention. A voter can have only one domicile for these purposes. No person shall be deemed to have lost a domicile by reason of his or her presence or absence while employed in the service of the United States; nor while engaged in the navigation of the waters of the United States or of the high seas; nor while a teacher in or student of any seminary of learning; nor while confined in any public prison or other penal institution; nor while a patient or confined for any reason in any nursing, convalescent home or hospital, old folks or old age home, or like institution or private facility.

## DECLARATION OF CANDIDACY

Prior to the opening of the filing period for a state primary, the Secretary of State will provide each town and city clerk with a supply of Declaration of Candidacy forms. Only candidates for state representative or delegate to the Republican state convention file with the town or city clerk. RSA 655:15.

The Declaration of Candidacy must be filed with the town or city clerk during the filing period together with the administrative assessment fee of \$2 (or the candidate may submit 5 primary petitions and an assent to candidacy in lieu of the administrative assessment fee).

Candidates must be a registered member of the party for which they are filing. It is the responsibility of the clerk to make sure that the person signing the declaration of candidacy is a registered member of the party for which he or she is filing. Political organization candidates, sometime called third party candidates, for State Representative file with the Secretary of State.

Any candidate who signs the affidavit on the declaration of candidacy and does not agree to limit campaign spending has 3 days from the date the declaration of candidacy is filed to change his or her mind and sign the affidavit agreeing to limit his or her campaign spending. RSA 655:19-b, II.

In single-town representative districts, candidates file with the town clerk of that town. In districts composed of more than one town, the candidate

files with the town clerk in the community in which the candidate is domiciled.

Candidates for state representative must complete every portion of the declaration of candidacy, including the affidavit of qualification, the financial disclosure and the statement declaring whether the candidate will agree to limit campaign spending or not. RSA 655:14; RSA 655:15; RSA 655:15-A.

Candidates who file for state representative are also acknowledging that, if they are elected, they will serve as a delegate to the county convention.

**Declarations of candidacy, primary petitions, and assents to candidacy must be mailed by the town or city clerk to the Secretary of State on the same day they are filed. RSA 655:18; RSA 655:27.**

Fees paid by a candidate to the town or city clerk become the property of the town or city. RSA 655:19.

Delegates to the Republican state convention are elected at the state primary election. The number of delegates to be chosen from each town or city is set forth in RSA 662:6. Candidates for delegate are not required to pay any fee or file any petitions. RSA 653:6. They must be registered members of the Republican Party and must be domiciled in the town or city they are to represent. If the person elected delegate is entitled to serve as a delegate because he or she has been nominated for office, the next highest eligible vote-getter shall be elected to that delegate seat. RSA 653:6.

Currently the Democratic Party does not elect delegates. Anyone wishing to attend the Democratic state convention should contact the Democratic State Committee. Names of those wishing to be delegates to the Democratic state convention do not appear on the primary ballot.

## PRIMARY PETITIONS

Each primary petition may contain the name of only one candidate and bear the signature of only one voter. See sample primary petition at page 164. The oath of the voter upon the petition is sufficient evidence that he is a member of the party stated. No voter shall sign conflicting party petitions, nor shall he sign more than one primary petition for the same office unless more than one nomination is to be made; in which case he may sign as many primary petitions as there are nominations of his party to be made for the same office. If a voter has signed two or more conflicting primary petitions, all such petitions shall be rejected. RSA 655:21 through RSA 655:24.

An Assent to Candidacy/Declaration of Candidacy completed by the candidate must accompany any primary petitions filed. The candidate must complete every portion of the form, including the affidavit of qualification, the financial disclosure and the statement declaring whether the candidate will agree to limit campaign spending or not. RSA 655:25; RSA 664:5-a; RSA 15-A.

It is the duty of the clerk with whom the petitions are filed to examine them. If a petition is found to be in conflict with the law, the clerk shall note the reason it is not acceptable on the petition and return it within 24 hours to the candidate. For each petition that is rejected, the candidate may file a supplementary petition with the clerk no later than the last day of the filing period for declarations of candidacy. RSA 655:26.

## PARTY COMMITTEE NOMINATIONS

In the event that no declaration or petition has been filed on behalf of a candidate for any office, the appropriate party committee may make a nomination to fill the vacancy by notifying the Secretary of State on or before the Wednesday following the close of the filing period. Nominations made in this manner are also subject

to the payment of the appropriate fee or submission of the usual number of petitions. Affidavits must accompany the names of the candidates within the time limit. RSA 655:32.

## INCOMPATIBLE OFFICES

No person may file in a state primary for more than one of the following offices: governor, United States senator, United States representative, executive councilor, state senator, state representative, county sheriff, county attorney, county treasurer, register of deeds, and register of probate. No person shall seek or hold positions as a member of the general court and county commissioner at the same time. No person shall hold 2 of the following offices: county commissioner, sheriff, county attorney, county treasurer, register of deeds, or register of probate. RSA 655:10.

## DISQUALIFICATION OR DEATH OF A CANDIDATE BEFORE A PRIMARY

If any candidate dies or becomes disqualified between the close of the filing period and the date of the primary, the Secretary of State may remove his or her name from the ballot and the appropriate party committee may substitute a new candidate. RSA 655:33; RSA 655:34.

The reasons for which a candidate may disqualify himself or herself are specifically defined by statute. The candidate must make a written oath that he or she does not qualify for the public office which he or she seeks because of age, domicile, or incapacitating physical disability acquired subsequent to the nomination or filing. These are the only reasons for which a candidate may disqualify himself or herself. RSA 655:33; RSA 655:38.

If the ballots have already been printed, the Secretary of State may print or authorize the use of pasters on the ballot. If no name is to be substituted, blank pasters may be applied to the ballot to blank out the name of the withdrawn

candidate. Except as provided by law, no adhesive slips, pasters, or stickers shall be used on any ballot. The use of a paster shall invalidate the vote for that office where it is used. RSA 656:21; RSA 659:65.

## FOR STATE GENERAL ELECTION - NOMINATION PAPERS

A candidate for state representative who is not running as a Republican or Democrat may have his or her name placed on the state general election ballot by filing a declaration of intent and paying the \$2 administrative assessment fee with the Secretary of State's Office during the regular state

## SUBMITTING NOMINATION PAPERS TO SUPERVISORS

Only registered voters may sign nomination papers. See sample nomination paper at page 165.

No voter may sign more than one nomination paper for each office and no nomination paper shall contain the names of more candidates than there are offices to be filled. Each voter must fill out and sign an individual paper. RSA 655:40.


The completed nomination papers must be submitted for certification to the supervisors of the checklist in the community in which the voter is registered no later than 5 p.m. on the Wednesday 5 weeks prior to the State Primary Election. The nomination paper includes a section to be completed by the supervisors. If they confirm in ElectionNet that the person subscribing the nomination is a voter in his or her community, the supervisors should certify this by signing in the space provided. **A majority of the supervisors must certify and sign the nomination papers.**

In a city, the city clerk may certify the nomination papers instead of the registrars. In this case, only the city clerk needs to sign the certificate.

The supervisors must have the certified nomination papers available for the candidate no later than 5 p.m. on the Wednesday 2 weeks prior to the primary (September 12, 2006) and the candidate must submit the nomination papers to the Secretary of State no later than 5 p.m. on the Wednesday one week before the primary (September 12, 2006). When the nomination papers are submitted to the Secretary of State, they must be grouped by municipality. If they are not, the Secretary of State may reject them. RSA 655:41 through RSA 655:43.

## VACANCIES IN PARTY TICKETS

If a vacancy in any party ticket occurs after a primary, the appropriate party committee may

	<b>STATE OF NEW HAMPSHIRE</b> <b>Nomination Paper</b> <b>(For State General Election)</b> <b>RSA 655:40 - 45</b>
The subscriber, a registered voter in the State of New Hampshire, hereby makes the following nomination to be voted for at the state general election to be held on November 2, 2004, and requests that the name of said candidate be placed upon the official ballot to be used in said election as a candidate of the _____ Party.	
Candidate's Name _____	
Candidate's Domicile _____	
For the Office of _____ District No. _____	
<b>RSA 655:45</b> No person shall falsely make or file or knowingly deface or destroy any nomination paper, or any part thereof, or sign any nomination paper contrary to the provisions of law knowing the same, or any part thereof, to be falsely made or suppress any nomination paper, or any part thereof, which has been duly filed. Whoever knowingly violates any of the provisions of this section shall be guilty of a misdemeanor if a natural person or be guilty of a felony if any other person.	
Voter's Signature _____ Print Name _____	
Voter's Domicile _____ (street address) (town or city) (ward)	
Voter's Mailing Address _____ (street address) (town or city) (zip code)	
<b>CERTIFICATE OF SUPERVISORS OF THE CHECKLIST</b>	
The undersigned, a majority of the <i>Supervisors of the Checklist</i> (or Registrars of Voters), hereby certify that the voter signing this nomination paper is a registered voter in the town/ward of _____	
_____	
_____	
Date signed _____	
<b>RSA 655:41, II.</b> The city clerk may certify that the signer is a registered voter, if in a city.	
<b>Filing Deadlines:</b> August 11, 2004 - Last day to submit signed nomination papers to Supervisors of the Checklist in each town or city September 1, 2004 5:00 p.m. - Supervisors must have nomination papers certified for candidates and organizations September 8, 2004 5:00 p.m. - Last day to file certified nomination papers with Secretary of State's Office	

primary filing period. The candidate must later file the requisite number of nomination papers with the Secretary of State. If the candidate signs the affidavit and does not agree to limit campaign spending, he or she has 3 days from filing his declaration of intent to change his mind and sign the affidavit agreeing to limit his spending. RSA 655:14-a; RSA 655:17-a; RSA 655:19.



appoint someone to fill the vacancy, provided they do so within 5 days of the notice of disqualification or death and further provided that the name of the substitute candidate is received by the Secretary of State no later than the Tuesday prior to the election (October 31, 2006). RSA 655:38; RSA 655:39.

## **B. PRINTING OF ELECTION MATERIALS**

### **FOR STATE ELECTIONS**

The Secretary of State is responsible for preparing the ballots, forms and absentee voter materials for all state elections and state referenda, including constitutional amendments. RSA 656:1. New Hampshire law has long required paper ballots. In 2006 the legislature affirmed this policy by enacting RSA 656:1-a which provides that “for the purposes of facilitating the examination and recounting of votes cast, all elections shall be conducted using paper ballots in accordance with this title.” RSA 656:1-a.

### **REGULAR AND SAMPLE BALLOTS**

Ballots for state elections are delivered to town and city clerks prior to the election. The Secretary of State determines the number of ballots to be printed for a state primary. The number of general election ballots sent will be at least equal to the number of registered voters at the previous general election, however, the Secretary of State will determine the number of ballots to be sent to those towns and cities which use voting machines for both the primary election and the general election. RSA 656:19; RSA 656:26.

#### **State and Presidential Primary Elections**

The package of primary election ballots will include 10 sample ballots for each political party. The clerk must post 2 sets of sample ballots in public places in the town or ward within 1 day after he or she receives them. The remainder of the sample ballots are to be posted in the polling area on election day. RSA 656:28.

#### **State General Elections**

Ten sample ballots are printed and sent to the town or ward clerk to be posted in 2 public places within the community. The remainder of the sample ballots are to be posted outside the guardrail in the room in which the voting is to be held. RSA 656:18. Sample ballots are identical to the official ballots except that they are printed on tinted paper for the general election where the official ballots are white and on white paper for the primary election where the official ballots are on colored paper. Sample ballots also do not have the facsimile of the signature of the Secretary of State on them. RSA 656:18; RSA 656:28.

#### **Posting Sample Ballots**

At least one sample ballot for the general election and one sample ballot for each party for each of the primaries shall be posted not higher than 48” so as to be convenient for voters in wheelchairs. RSA 658:26.

### **ABSENTEE BALLOTS**

Absentee ballots and Federal Overseas Citizens absentee ballots are also prepared by the Secretary of State. As soon as these are ready, they are delivered to the town and city clerks along with envelopes, instructions and application forms. RSA 656:33 through RSA 656:38.

Political parties and candidates sometimes promote voter turnout by sending out materials promoting voting by mail. New Hampshire is not a vote by mail state. A voter must be unable to vote in person due to having a physical disability, religious observance, absence from the jurisdiction or must be unable to vote in person at the polling place because he or she will be at work or commuting to or from work from the time the polls open until after the time for the polls to close to be qualified to use an absentee ballot. RSA 657:1. Clerks should send a “notice of requirements for use of absentee ballot” with the absentee ballot materials. See a sample notice at page 123.

## REGISTRATION FORMS

### ELECTION DAY AFFIDAVITS

The supervisors of the checklist shall ensure that a sufficient quantity of voter registration forms, citizenship affidavits, and domicile affidavits are available at the polling place for election day registration of all qualified persons at all elections. RSA 654:7-a, I, II.

### OTHER MATERIALS

The Secretary of State will also supply the following materials for state elections:

- a. Instructions to Voters;
- b. Posters listing the Purity of Elections statutes;
- c. Absentee ballot applications;
- d. Armed services absentee ballot applications;
- e. Federal Overseas Citizens absentee ballot applications;
- f. Regular absentee voting affidavit envelopes;
- g. Armed Services absentee voting affidavit envelopes;
- h. Federal Overseas Voters affidavit envelopes;
- i. Envelopes addressed in black: "To the town or city clerk of \_\_\_\_" for regular and Federal Overseas Voters;
- j. Envelopes addressed in red: "To the town or city clerk of \_\_\_\_" for Armed Services absentee voters;
- k. Envelopes printed in black stating: "Enclosed is the ballot of an absent voter" for sending materials to regular and Federal Overseas Voters;

- l. Envelopes printed in red stating: "Enclosed is the ballot of an absent voter" for sending materials to Armed Services Voters;
- m. Instructions for Absentee Voters;
- n. Adhesive stripped ballot box sealing certificates; and
- o. Affidavit of Challenged Voters forms.

### FOR LOCAL ELECTIONS

The town or city clerk must prepare regular and absentee ballots and instructions to voters. The clerk may save the purity of elections statutes poster from the state election or request an additional copy from the Secretary of State. The other forms provided by the Secretary of State may be used for local elections. **However, towns are responsible for providing absentee envelopes to be used at local elections.**

Any town that has adopted bylaws regarding electioneering pursuant to RSA 31:41-c should post them at each polling place at least 72 hours before any town election.

### C. DISTRIBUTION OF ABSENTEE BALLOTS

#### WHO IS ELIGIBLE

A person may vote by absentee ballot:

1. Who will be absent from the city, town or place in which he is qualified to vote on the day of an election for which an official ballot is used;
2. Who is by reason of having a physical disability unable to vote in person;
3. Who is a member (spouse or dependent of a member) of the armed services or affiliated services pursuant to RSA 654:4 who will be absent on election day;

4. Who is entitled to vote as a Federal Overseas Citizen's Absentee Voter pursuant to RSA 654:3;
5. Who because of observance of a religious commitment cannot vote in person; or
6. Who is unable to appear at any time during polling hours at his or her polling place because an employment obligation requires the person to remain physically at work or to be in transit to or from work from the time the polls open until after the time the polls close.

RSA 657:1 through RSA 657:3.

## **EMERGENCY SERVICES WORKERS**

The Legislature, in 2006, established a program to assist emergency services workers in casting absentee ballots when those workers are voters who have been called into public service immediately before an election. If an emergency services worker receives notice after noon on the Friday before an election that he or she is being called into service under circumstances that will prevent that person from voting in person or absentee using the usual procedures the Secretary of State's Office should be informed. The Secretary of State, with assistance from the Attorney General and the Department of Safety, will make every reasonable effort to get absentee ballots and materials to these emergency service workers and back to the local polling places.

One important effect of this law is that it waives the usual requirement that ballots be received at the polls by 5:00 P.M. Under this law any absentee ballot received before the polls close from a deployed emergency services worker, if found properly qualified, must be counted.

The law also allows the Secretary of State to make use of a special absentee ballot listing statewide offices only. If the Secretary of State makes use of these special ballots, the moderator and/or clerk will be notified and advised to expect these special ballots.

Local election officials should make an effort to ensure that local emergency services workers are aware of this law. In the event of a local emergency that ties up local emergency services workers and prevents those who planned to vote in person at the polls from doing so, local officials should contact the Secretary of State and make arrangements for a local official to transport absentee ballots and materials to the site of the local emergency and afford qualified emergency services workers to cast absentee ballots. RSA 657:21-a.

## **ADVERTISING PROMOTING ABSENTEE VOTING**

The Legislature in 2006 established a requirement that anyone promoting voting by absentee ballot in any written advertising must include a copy of the state application for an absentee ballot or a facsimile of that form. It also requires these ads to include the qualifications for voting absentee. Please monitor the applications that come into your office and if you see pre-printed applications which appear to have come from political advertising which do not include the qualifications or requirements for voting absentee, immediately alert the Attorney General's Office. This statute is intended to reduce the frequency of voters being misled to believe that they can vote absentee without justification. It is hoped that the requirement that ads include the requirements for voting absentee will reduce the number of absentee ballots that clerks send out which are never returned. RSA 657:1, II. This law takes effect January 1, 2007.

## **UNLAWFUL USE OF ABSENTEE BALLOT**

Anyone who votes or attempts to vote under the provisions of this chapter who is not entitled to vote by absentee ballot or anyone who votes or knowingly attempts to vote in violation of any provision of the Absentee Voting law, RSA Chapter 657, shall be guilty of a misdemeanor. Election officials suspecting that a voter has voted using an absentee ballot when that voter

was able and available to come to the polls and vote in person should notify the Attorney General's Office. However, the person's absentee ballot, if the affidavit otherwise satisfies the law and the voter is otherwise qualified as a voter, must be cast and counted. A person loses his or her right to vote and to have his or her vote counted only if the voter is an incarcerated felon or has been convicted of a willful violation of the election laws. New Hampshire Constitution, Part 1, Art. 11; RSA 607-A:2. Therefore, it would violate the voter's rights to refuse to count his or her ballot because of suspicion that he or she wrongfully used an absentee ballot when he or she was required by law to vote in person at the polls. While New Hampshire is a vote-in-person-at-the-polls state, it is important not to violate a person's right to vote by not counting their ballot based on a yet-to-be-proven suspicion that they are improperly voting absentee.

## APPLICATIONS DISTRIBUTED BY CLERKS

An individual desiring to obtain an absentee ballot must apply to the town or city clerk. He may use either the form provided by the Secretary of State for this purpose or he may provide the same information in writing without the form. An armed service member who wishes to obtain an absentee ballot without having his or her name on the checklist must supply the information on the special Armed Services Absentee Ballot Application. RSA 657:4; RSA 657:6.

A regular absentee voter must submit a separate written request for an absentee ballot for both the primary election and the general election if the address to which the ballot will be sent is within the United States. The law allows a regular absentee voter who is located outside the country, an armed services voter, or a federal overseas citizen voter, to request both a primary and general election ballot with a single application. RSA 657:4.

Applications for an absentee ballot may be sent by facsimile to a town or city clerk; however, an absentee ballot may not be sent by facsimile.

## RECEIPT OF APPLICATION

Upon receipt of an application for a regular absentee ballot, the clerk shall determine if the applicant's name is on the checklist. All information must be provided and the form or request must be signed by the applicant. While the new absentee ballot application form includes a place for the voter to indicate that he or she will qualify for one of the exceptions that permit absentee voting, if the voter applies by letter or otherwise in writing, but not using the form, the application should be accepted even if it does not state the exception that will permit the voter to vote absentee.

Armed Services absentee voters and Overseas Citizens absentee voters need not be registered to be sent an Armed Services or a Federal Overseas Citizens absentee ballot and affidavit envelope provided they apply using the Armed Services Absentee Ballot Application or the federal Post Card Registration and Absentee Ballot request. RSA 657: 12; RSA 657: 13.

If the applicant's name is not on the checklist, the clerk shall send the applicant a(n):

- Absentee registration form;
- Absentee ballot;
- Affidavit envelope, marked with the words "not registered;"
- Return envelope;
- Notice of requirements for absentee voting; and
- Written notice of what documents and forms the applicant must return in order for his or her absentee ballot to be counted.

If the applicant returns the required documents in proper form with the absentee ballot and if the applicant is found to be qualified, he or she shall be added to the checklist and the absentee ballot shall be processed in the same manner as the absentee ballot of a previously registered voter. If the absentee ballot is returned without the required registration documents in the proper

form, the ballot shall be marked and preserved in the manner set forth by law for successfully challenged absentee ballots.

The affidavit envelope and contents shall be preserved unopened, stored with the ballots, and destroyed unopened when the time comes for destruction of the ballots from that election. RSA 657:16.

It is recommended, but not required by law, that all successfully challenged absentee voters, including those who failed to send documents required to become registered, be sent a notice. The notice should advise the voter that his or her absentee ballot was successfully challenged or was rejected by the moderator, as well as the grounds for the challenge or the reason for rejection. The voter should be notified so he or she can correct the deficiency when voting at future elections.

The State of New Hampshire

APPLICATION FOR OFFICIAL STATE PRIMARY ABSENTEE BALLOT

To the city or town clerk of Meredith I, John B. Smith, hereby apply for an official absentee ballot for the Republican party at the state primary election. I am a duly qualified voter, am registered as a member of the Republican party, (or I am now applying for a Republican ballot), and am entitled to vote in ward ... city or town Meredith.

Mail absentee ballot to Box 970, Reading, Pa. 17567.

(Signature) John B. Smith

(Street and number) RFD #2

(City or town, state and country) Meredith, N.H. 03253

## CLERKS TO SEND OR DELIVER BALLOTS

The clerk must mail or personally deliver the absentee ballot, making certain that the appropriate ballot, envelopes, and instructions are enclosed. If the application for an absentee ballot does not state that the voter will be absent from town or unable to vote in person due to religious observance, physical disability, or work obligations, the clerk should also send a notice of the requirements for absentee voting. See model notice at page 123.. The clerk may designate an assistant to deliver an absentee ballot provided that the assistant is not a candidate for office or working for a candidate. RSA 657:15.

## RETURN OF MARKED BALLOTS: CUTOFF

A voter who has received an official absentee ballot must either mail or personally deliver it to the city or town clerk. Town and City Clerks must be available for absentee voters between 3 and 5 p.m. on the day before any election. This is the deadline for personally delivered absentee ballots. If a voter brings his or her absentee ballot in person to the polling place on election day, the voter should be instructed to vote in person using an election day ballot. The voter can either keep the absentee ballot/affidavit envelope or if turned in it should be preserved unopened, marked voted in person. **Absentee Ballots delivered by mail shall be accepted no later than 5 p.m. on election day.** RSA 652:20; RSA 657:22.

## LIST OF ABSENTEE VOTERS TO BE MAINTAINED BY CLERK

The clerk shall maintain a listing in ElectionNet, arranged by voting place, of all (regular, federal overseas, armed services) applicants to whom absentee ballots have been sent and shall identify on the list those ballots which have been returned by the voter. ElectionNet includes features which make creating and maintaining this list simple. Maintaining the list in ElectionNet will allow the Secretary of State and local election officials to satisfy federal reporting requirements. (U.S. Public Law 107-252, section 703.)

The list of persons requesting/returning absentee ballots is not a public document and is available only to a candidate whose name appears on the ballot, or his or her designee (if the designee presents a notarized request signed by the candidate or a copy of that request). RSA 657:15; RSA 658:27.

The list of absentee voters is **NO LONGER** posted at the polling place. (repeal by Ch. 246, 1998. RSA 658:27).

People interested in information on who voted absentee are entitled, after the election, to see and/or copy the checklist used on election day where absentee voters are marked with a red ink "A.V." when the voter is checked off as having voted.

## RECEIPT OF MARKED BALLOTS BY CLERK

Upon receipt of a marked regular absentee ballot (black printed envelope), the clerk should attach the voter's absentee ballot application to the return envelope.

Any absentee ballots received in the mail prior to 5 p.m. on election day must be considered valid if properly filled out. If the absentee ballot is from a member of the armed services or an overseas citizen, and his or her name is not on the checklist, the name should, by virtue of the completed absentee ballot and properly executed affidavit envelope, be added to the checklist. RSA 657:21.

## DEATH OF AN ABSENTEE VOTER

If the election officials counting ballots have knowledge that an absentee voter has died prior to the opening of the polls, the absentee affidavit envelope must not be opened and the vote must not be counted. RSA 659:48.

## FEDERAL POST CARD APPLICATION

The United States Department of Defense prints and distributes applications for voter registration and absentee ballots. The full-page form serves in New Hampshire as a request for an absentee ballot or a request for sending a state Voter Registration Form. **NOTE: The postcard is not recognized in New Hampshire as a valid absentee registration application.**

A voter requesting an absentee ballot must complete all sections of the postcard. A voter who checks off any box between 1(a) and 1(c) need not

be a registered voter in order for a ballot to be sent. Persons in one of these categories qualify as Armed Service or Overseas Citizens voters in New Hampshire and can be added to the checklist when a completed ballot is returned. A voter requesting that an absentee ballot registration form be sent needs to fill out parts 1, 2, 3, 4, 6 and 7.

An Armed Service and Federal Overseas Citizen absentee voter may use the federal postcard application to request an absentee ballot be sent for all elections in which he or she is eligible to vote for each subsequent election through the next two regularly scheduled general elections. The clerk should make a copy of the request to be attached to each returned ballot prior to processing on election day. RSA 657:19; RSA 657:19-a. The clerk should enter into ElectionNet (SVRS) the period of time that absentee ballots should be sent.

The newly revised federal postcard has a postage free return postcard attached for the town clerk to send back to the voter. Clerks should use this card to acknowledge the elections for which the voter will be sent ballots or to indicate any problems with the application. The postcard can be viewed at <http://www.fec.gov/votregis/pdf/nvra.pdf>.

## CHANGING PARTY AFFILIATION - FEDERAL POSTCARD

If the voter does not indicate a party affiliation, he or she cannot vote in a primary election. Political party affiliation is not required to vote in a general election. If the voter using the Federal Postcard Application ("FPCA") is currently registered and wants to change his or her political party affiliation or has previously declined to indicate a political party, he or she must submit a completed FPCA which includes the new political party preference to the local election officials not later than 10 days before the election.

## **D. FURTHER PREPARATIONS**

### **MODERATOR MUST PREPARE POLLING STAFF**

The moderator is authorized to appoint assistant election officials to serve at the central polling place. 17 year olds, while not eligible to vote at an election, may be appointed as election officials.. Communities should consider recruiting young people to serve as election officials as a way of encouraging their participation in the democratic process. RSA 658:7; RSA 658:7-a.

The moderator is responsible for making certain that each of the election officers understands what his or her specific responsibilities will be. RSA 659:9.

Inspectors of election should be appointed by each of the two major political parties to work with the other election officials. Generally, there are at least two inspectors of election for each of the two major parties. However, if the number of voters at the polling place exceeds 2000, the parties may appoint 1 additional inspector for each 1500 voters. RSA 658:2.

If any such appointments are not made by the political committees and proper notification thereof given on or before October 15, the selectmen in the town or wards concerned shall make the appointments of the inspectors of election in equal numbers between the two major political parties. If the moderator so requests, the political parties may appoint on an equal basis an additional number of inspectors as the moderator deems necessary. RSA 658:2.

The ballot clerks are chosen by the moderator from among the inspectors of election. Two clerks are chosen, one from each political party. The ballot clerks shall have charge of the ballots during the time the polls are open and shall furnish ballots to the voters. RSA 658:25; RSA 659:13.

The inspectors who are not designated as ballot clerks are assigned duties by the moderator at the polling place, such as relieving the ballot clerks and assisting elderly voters, the illiterate, or voters with disabilities requiring assistance in marking their ballots. RSA 658:25; RSA 659:20.

### **DISQUALIFICATION OR ABSENCE OF CERTAIN OFFICIALS**

Any election official, elected or appointed, whose name appears on a ballot for an elected position, other than a position as an election official, is to be disqualified from performing his duties as an election official in that election. RSA 658:24. An election official whose name is on the ballot should not be appointed or assigned to do the duties of a different election officer. For example, a selectman who is on the ballot seeking re-election may perform the duties of selectman at that election, but should not be appointed or assigned to fill in for the moderator.

Election officials in towns that have adopted an electioneering ordinance pursuant to RSA 31:41-c or a conflict of interest ordinance pursuant to RSA 31:39-a must also review those ordinances to ensure they do not create a duty for the official to disqualify himself or herself.

The absence created in the position of election official or any other temporary absence must be filled as follows:

- a) A moderator pro tempore shall be appointed by the moderator if the moderator is absent or disqualified. RSA 658:19.
- b) A supervisor pro tempore shall be appointed by the moderator, if more than one member of the board is absent or disqualified. RSA 658:21.
- c) A town or ward clerk pro tempore shall be appointed by the town or ward clerk if a clerk is absent or disqualified. If a town or city ward has a deputy clerk, the deputy clerk would fill in for the absence or disqualification of the clerk. RSA 658:20.

d) An inspector of election shall be appointed by the selectmen if an inspector of election is absent or disqualified. RSA 658:22.

The term election official includes the town clerk, ward clerk, deputy town clerk, city clerk, deputy city clerk, selectmen, moderator, supervisors of the checklist, registrar or deputy registrar, and any assistants appointed in accordance with RSA 658:7. The term election officer is specifically defined in RSA 652:14. The terms “election officer” and “election official” are generally interchangeable. If a school district conducts a separate election the term also, for that election would include the school district clerk, school moderator, and school board members. At a separately conducted school district election the school board members would serve as the supervisors of the school district checklist. RSA 671:16. Any official so appointed will have the same duties and authority as the election official who was disqualified. RSA 658:23; RSA 658:24.

## **ADDITIONAL STAFF**

The moderator may appoint an assistant moderator and such other election officials, as he deems necessary. The town clerk, upon request of the moderator, may appoint an assistant town clerk. RSA 658:7.

## **EQUIPPING THE POLLING PLACE**

The selectmen are responsible for supplying a ballot box, pencils, or the appropriate pens for marking Accuvote ballots, voting booths, United States flag and guardrail. The town clerk must bring the ballots, absentee ballots, checklist and election forms supplied by the Secretary of State for election day. RSA 658:9. See suggested lists at pages 134 and 135.

The supervisors should supply or ensure that the town clerk supplies sufficient voter registration forms, citizenship affidavits, and domicile affidavits for use on election day. At each primary a signature list of undeclared voters must be printed from ElectionNet to allow undeclared voters to return to

undeclared status on election day. RSA 654:7-a; RSA 654:7; RSA 654:34. ElectionNet is designed to print a list of all undeclared voters that contains bar codes for each voter and party choice. When a voter signs this list indicating that he or she desires to change their party affiliation after having voted in a primary, the supervisors can use the bar code reader issued as part of the ElectionNet system to quickly and easily enter the record of party changes into ElectionNet. The sheets containing the voter’s signatures of those voters who choose to change party affiliation should be preserved to resolve future disputes about whether the voter actually did change party affiliation.

## **VOTE COUNTING MACHINES**

The mayor and aldermen of a city or the selectmen of a town may elect to use voting machines in their communities. If such a decision is made, the town or city must notify the Secretary of State. The make and model of all voting machines either purchased or leased must first be approved by the Ballot Law Commission. RSA 656:40-43-a. Currently only the Diebold Accuvote machine is authorized for use in New Hampshire.

## **POSTING OF WARRANT**

Warning of the time and date for a general election in towns or wards and town meeting in towns is the responsibility of the selectmen. The warrant must state the hours during which the polls will be open and the hour before which the polls may not close, offices to be elected, questions to be voted on by ballot, and the polling place location. RSA 658:1; RSA 669:2.

The warrant must be posted at least 14 days prior to any election at all polling places and at the office of the town or city clerk or at the town hall. See the New Hampshire Political Calendar published by the Secretary of State for dates.



## CHOOSING THE SITE

The selectmen of the town or ward must provide a suitable place in which to hold the election. This site should be well-known, such as the town or city hall, school gymnasium, fire station, etc. The room where the voting is held should be large enough to accommodate voters, election officials, and to have a public area where people can watch the conduct of the election. It must also be well-lit, and heated. The polling place must be furnished with the proper supplies and conveniences.

New Hampshire's Constitution, as well as Federal and State law require that all registration and polling places be accessible to elderly voters and voters with disabilities. An accessible polling place should have an entrance that is either at ground level or provided with a ramp; walkways which are level and continuous; smooth, even floors with no thick mats or carpets which could trip a person or block a wheelchair; doors which can be easily opened without twisting a doorknob; and, it should be well-lit with large, clear, voting instructions posted at levels visible to those in wheelchairs. RSA 658:9-a. See further discussion of accessibility starting at page 91.

Also, each polling place must have at least 1 voting booth which is easily accessible to the elderly and to persons with disabilities. The dimensions and restrictions on this voting booth are outlined in RSA 658:9, III.

If your registration and polling place facilities are currently inaccessible, it is the responsibility of the selectmen of the town or ward to ensure that either a new accessible polling place is secured, or that the current facilities are made accessible. The moderator has a duty to ensure that this occurs. Any election officer may contact the Governor's Commission on Disability (271-2773), Granite State Independent Living Foundation (228-9680), or other advocacy groups for persons with disabilities for assistance in identifying accessibility problems and advice on solutions. See additional information on accessibility starting at page 91.

## ADDITIONAL POLLING PLACES

Any town may vote at the town meeting to provide additional polling places and to establish the districts to be served by them. The city council in any city may establish additional voting districts within the wards of the city. The city council is responsible for designating the districts within the wards and to select the various election officials to run the polling place unless the city charter provides otherwise. RSA 658:10; RSA 658:18.

The selectmen of the town are responsible for equipping the additional polling place in the same manner as the central polling place. The moderator elected by the town shall preside over the central polling place. He or she may appoint an assistant moderator, who must be domiciled in the voting district, to run the additional polling place. RSA 658:11; RSA 658:14.

The town clerk should also appoint an assistant town clerk (domiciled in the town) to assume the duties of the clerk at the additional polling place. Two additional inspectors of election for each additional polling place are to be designated by each political party. The inspectors must be domiciled in the town and qualified, in the same manner as the officers of the central polling place. RSA 658:14; RSA 658:15.

Supervisors must prepare a list of the voters entitled to vote in the polling place. No later than 14 days prior to the election, they must post a copy at the town or city clerk's office or at the town hall. They must also give the town clerk 2 copies of that checklist. RSA 658:12.

All officers of the additional polling place shall have the same duties as officers at the central polling place. RSA 658:14.

## INSPECTING BALLOT CONTAINERS

The town or city clerk must open all boxes of ballots received from the Secretary of State for a

state election in the presence of at least one other voter as soon as possible after those boxes are received. The clerk should verify that the ballots are the proper ones for that town or city and then reseal the boxes using the sealing label provided in the box. RSA 656:20; RSA 656:22; RSA 656:29.

## TESTING VOTING MACHINES

Extra ballots are supplied to towns that use the Accuvote voting machines. These ballots must be used to test the machines for accuracy in tabulating votes, by doing the following:

Mark the extra ballots in such a way to demonstrate at least one vote for each candidate on the ballot, overvotes, undervotes, write-ins and possible combinations that you think a voter may indicate on a ballot. Particular attention should be given to straight-ticket voting and counting individual candidate votes in a general election. **Mark each ballot with the words “test ballot” or some similar mark to ensure these ballots can be distinguished from the ballots used at the election.**

Keep a hand-written tally sheet during the course of your testing and if the program is working correctly, the number of votes on your tally sheet should correspond with the votes on your ballot counting machine printout.

**This test should be completed no later than 5 days prior to the election. Any computer problems, including tabulation errors and mechanical failures should be reported to the Secretary of State's Office immediately.**

A copy of the computer printout and the tally sheet signed by the town or city clerk must be filed with the Secretary of State's Office as soon as the testing is complete.

After the testing is done, be sure to reseal your ballots in compliance with RSA 656:20. Also be sure to secure all computer programs, test reports and test results in a sealed container and place them in a secure location until election day. See

instructions for testing ballot counting machines at page 136.

It is essential that the ballot counting machine be kept secure to ensure that no opportunity exists for tampering with the machine. The memory card that is programmed by LHS Associates for each town and city contains much of the programming that is necessary to ensure that the machine counts each ballot accurately. It is, therefore, very important that the memory card be kept secure. The memory card must be kept secured in the sealed container the machine is stored in or otherwise kept in some secure location, such as a locked drawer in the clerk's desk.

## SEALS

To ensure that a counting machine cannot be tampered with and to have evidence that the machine has not been improperly accessed by unauthorized persons, it is necessary that the ballot counting machines be sealed. The Secretary of State provides three types of breakable uniquely numbered seals. These seals allow the clerks to seal the memory card after it is inserted into the machine and the storage container for the machine. Each time the machine is accessed it will be necessary to break the container seal.

A log must be kept documenting each time that the machine is accessed and recording the condition of the seal before it was broken to make access as well as the number of the new seal used to re-seal the container when it is put back into storage. The Secretary of State provides a sample log sheet for this purpose.

The seal for the memory card should be replaced for each election when the newly programmed card is re-inserted into the machine for the pre-election testing of the card. The card should remain sealed until after the recount period ends following the election. The seal for the cover of the machine should only be broken by LHS when it services the machine. The cover must be resealed by the clerk when the LHS technician

has completed any service work. Each time any of the two seals are broken and the machine is resealed it should be documented in the log.

### III. ELECTION DAY

#### A. CONDUCTING THE POLLING OF VOTES

##### **DATES OF ELECTIONS**

Town elections are held annually on the second Tuesday in March, the second Tuesday in May, or the Tuesday after the first Monday of November in odd-numbered years. RSA 669:1. Towns which adopt the provisions of RSA 40:13, known as Senate Bill 2 ("SB2") towns, adopt separate dates for a deliberative meeting and an election day where warrant articles are voted on by ballot. The dates chosen must be in accord with the restrictions set forth in that statute.

City elections are held in accordance with applicable provisions of the city charter.

The state primary is held on the second Tuesday in September (September 12, 2006). RSA 653:8.

The state general election is held on the first Tuesday after the first Monday in November. (November 7, 2006) RSA 653:7.

Presidential preference primaries shall be held on the second Tuesday in March or on a Tuesday selected by the Secretary of State which is 7 days immediately preceding the date on which any other state shall hold a similar election, whichever is earlier, of each year in which a President of the United States is to be elected, or the year previous. The Secretary of State will call a special election if other than on the second Tuesday in March. RSA 653:9.

##### **TIME POLLS ARE TO BE OPEN**

At all state elections the polls in both towns and cities shall open not later than 11 o'clock in the morning and cannot close earlier than 7 o'clock in the evening.

In cities, the city council shall determine the polling hours at least 30 days prior to the election. RSA 659:4.

At the 1994 general election, many communities voted yes on the following question: "Shall we adopt polling hours in  (town name)  at all state elections beginning with the 1996 state primary election under which the polls shall open not later than 8 o'clock in the morning?" If a community voted yes, then their polls must open at 8 a.m. for all state elections. This provision does not apply to local elections.

Any town wishing to change their polling hours may do so by voting on an article at town meeting under the provisions of RSA 659:4-a. If the article passes, the Secretary of State should be notified, so that the question to change the hours can be put on the next general election ballot for that town.

For city elections, hours are set by city charter, or by the city council. In towns, hours are to be set by the board of selectmen.

Polling hours for a town meeting or election shall be set by the selectmen or by a vote of the town. RSA 669:25. Municipalities are encouraged to have uniform polling places and hours to make it easy for voters to know when and where they vote at any election, State or municipal.

##### **ROLE OF THE MODERATOR**

The moderator is the chief election officer in charge of the polls. It is his or her responsibility to make certain that all the election officials are available on the day of the election and that each is familiar with his or her duties for the day. See further discussion of the moderator's duties starting at page 55. In cities the City Clerk is the Chief Election Office for the city and may

establish uniform procedures that will apply citywide. RSA 652:14-a; RSA 659:9-a.

## **SETTING UP THE POLLING AREA**

The polling area should be set up to provide an orderly flow of voters. The guardrails must be placed so that no person outside the rail can approach closer than 6 feet to the voting booths. No person other than the election officials or individuals registering to vote at state elections, and registered voters in the process of voting may be within the rails except by the authority of the election officials. Ballots may not be removed from within the rail until the counting is completed after the polls close. RSA 659:15.

## **READY FOR OPENING THE POLLS**

Prior to the opening of the polls, the moderator must ensure that the polls are properly equipped and staffed. A complete checklist is set forth starting on page 55.

## **SETTING UP AN ADDITIONAL POLLING PLACE**

For those towns which have elected to use additional polling places, the following must be done as well:

- 1) Two copies of the supervisors' checklist for the area served by that additional polling place must be given to the clerk before the election.
- 2) On the day of the election, the clerk must bring the copies of the checklist as prepared by the supervisors and deposited with him to the additional polling site.
- 3) The clerk is also responsible for providing a sufficient number of ballots for the additional polling place. The preparation of this package is done in the presence of the moderator and selectmen, and it is then delivered to the assistant moderator at the additional polling place by 2 election officers designated by the moderator.

Voting procedure at the additional polling place is conducted as it is at the central polling location. RSA 658:33; RSA 658:16.

## **PROCEDURE FOR ACCEPTING VOTERS**

1. Any unregistered person who wishes to vote in any election, shall proceed directly to the supervisors of the checklist to register to vote in the polling place. The applicant shall complete the Voter Registration Form and any affidavits required by the supervisors. He or she must prove identity, age, citizenship and domicile as required by RSA 654:12. If the applicant previously submitted a Voter Registration Form by mail, but did not submit a copy of a current and valid photo identification or other proof of qualification, then he or she must present such proof the first time the applicant votes in person. HAVA sec 303 (b). If approved by the supervisors, the newly registered voter shall then proceed to the ballot clerk, with proof of registration, to receive ballots for that election.

2. A previously registered voter should approach the guardrail and state his or her name to a ballot clerk. The ballot clerk then repeats the name and verifies that it appears on the checklist. If the name appears on the checklist, the ballot clerk places a check next to it, and repeats the name.

The ballot clerk must then ask the voter if the address listed for the voter on the checklist is correct. If the address is not correct, the ballot clerk must correct the address on the checklist in red ink.

In a primary, the party affiliation of the voter must also be stated. RSA 659:13; RSA 659:14.

The accuracy of the checkmarks made beside the names of voters who sign in to vote is critically important. These marks will prevent the person whose name is marked from voting again later that day. Therefore, it is very important that the mark not be erroneously put beside the wrong name. These marks will also be used by supervisors and the Attorney General's Office as

evidence that a person voted should there be an investigation into whether the person voted at more than one polling place or in more than one state. Errors should be clearly corrected and should show the initials of the election official making the correction.

3. If the voter's name does not appear on the checklist, it may be because the individual was never registered, the name was inadvertently removed from the checklist, or he or she may be at the wrong polling location. If the name does not appear on the checklist, the voter may not be given a ballot unless the supervisors determine that the person had been unjustly dropped from the checklist, omitted by reason of a clerical or technical error, or qualifies to register on election day. The supervisors should certify to the moderator that the voter is indeed registered and entitled to vote. RSA 659:12.

4. A ballot clerk hands the voter one of each ballot to be cast at the election. In a primary, the ballot which is handed to the voter should be the ballot of the voter's party. RSA 659:13; RSA 659:14. To avoid voters marking ballots in public or trying to leave the area within the guardrail, moderators may require the ballot clerks to hand out ballots only when a voting booth is available.

5. Voters who are unaffiliated with any party may declare his or her party affiliation at a primary. Those who do so may vote the ballot of his or her new party at that election. A VOTER WHO IS ALREADY AFFILIATED WITH A PARTY ON THE DAY OF THE PRIMARY MAY CHANGE HIS AFFILIATION; HOWEVER, HE MAY NOT VOTE THE BALLOT OF ANY PARTY IN THAT PRIMARY. RSA 659:14; RSA 654:34.

6. The voter should then be directed to a vacant voting booth or voting screen in which he can mark his ballot. No voter should be allowed to remain in the booth for an inordinate length of time when others are waiting to use it. RSA 659:15; RSA 659:25.

7. Voters needing assistance may request the moderator to allow another person to assist them. RSA 659:20. 42 U.S.C. 1973 aa-6. Federal and

state law allow the voter to select a person of their choice provided that person is not the voter's employer or union official. If the voter does not have a preference, the Moderator should appoint one or two inspectors of elections, ballot clerks, to assist the voter.

8. Any voter who spoils a ballot(s) may receive another, not exceeding 3 in all, upon returning the spoiled ballot(s) to the moderator. The moderator must write the word "canceled" on the ballot and sign it. Any spoiled ballots should be held by the moderator and sealed with the other unused ballots at the end of the counting. RSA 659:22.

9. Upon completing the marking of a ballot that will be hand counted, the voter should fold it so that the votes cannot be seen. If ballot counting machines are in use, the ballot should be placed in a privacy folder so that the votes cannot be seen. He or she then approaches the checkout table and states his or her name (name and party, if a primary) to the town or ward clerk. The clerk places a mark beside the voter's name on the checklist. RSA 659:23.

10. The voter then must hand his ballot to the moderator who must place the ballot in the ballot box himself or herself. The purpose of this statute is to provide another check that the voter is depositing only one ballot in the box. Reluctant voters should be counseled that the law clearly dictates this procedure. RSA 659:23.

11. In towns that use the Accuvote machines, the voters may insert their ballots in the machine themselves. The moderator must monitor the voter to ensure only the appropriate number of ballots is inserted. A checkout checklist is not required in towns that use voting machines. RSA 659:23, II.

12. Undeclared voters may, after declaring a party and voting, complete the party affiliation change by signing the list of undeclared voters provided by the supervisors at the polls to return to undeclared status on election day. RSA 654:34, II. For this purpose, ElectionNet produces an

“Undeclared Re-registration Report” that contains a bar code for each undeclared voter.

13. The voter should then leave the voting area. No voter whose name has been checked off on the checklist may be allowed to re-enter the polling area, except to assist a voter as mentioned under step 7-8. RSA 659:26.

## CHALLENGE OF A VOTER

Any voter may have his right to cast a ballot in a given election challenged by any other legal voter of a town or ward. Election officials, challengers appointed by the political committees or the Attorney General may also challenge a voter. RSA 659:27; RSA 666:4; RSA 666:5.

Usually challenges occur at the time the voter is at the check-in table before being given his or her ballot. Challenges may, however, occur at any point up until the ballot is deposited in the ballot box. Challengers must be so positioned in the polling place so that they can see and hear each voter as he offers to vote, but challengers cannot be within the guardrail. RSA 666:4; RSA 666:5.

A challenge must be made for a specific reason. See list of grounds for a challenge and further discussion of managing challenges starting at page 97. See model challenge form at page 167.

When a voter is challenged and the moderator rules the challenge is well grounded, the moderator may not accept that voter’s ballot unless and until the voter signs an affidavit either on the form provided by the Secretary of State or in substantially the same language. RSA 659:27 through RSA 659:33.

## CHECKLIST OF THINGS TO DO DURING ELECTION DAY

1. The moderator should receive the absentee ballots from the clerk before the polls close, or before the time set for processing the absentee ballots. The moderator should sign a receipt for these ballots. RSA 659:46.

2. The moderator should assign an election officer to periodically check the voting booths to remove campaign materials. This officer should also make certain that the pencil is sharpened (or that the pen has not dried out), and that the voter instructions are still posted.

3. No person who is a candidate for office or representing or working for a candidate shall, within the building where the election is being held, distribute or post any cards or other printed or written material. RSA 659:43. The moderator has the authority to prevent electioneering within the room where the voting occurs, along the path from that room to the entrance to the building, and along a corridor established by the moderator outside the building leading from the entrance door, at least ten feet wide, as far into the street or parking area as the moderator determines is necessary. See further discussion of electioneering starting at page 105.

4. No election official shall electioneer (act to influence voters) while performing his official duty. RSA 659:44. While election officials are not strictly prohibited from going outside and electioneering during breaks or while off duty, this practice is *strongly* discouraged. At the least the election official should remove his or her election official name tag and any other indication that he or she is an election official. Election officials who want to electioneer are strongly encouraged to temporarily step down for the entire election and allow a temporary replacement to perform their election duties.

## CLOSING THE POLLS

The moderator must punctually close the polls at the hour stated in the warrant or notice, unless the hours have otherwise been extended. **Everyone waiting in line when the poll closing is announced must be allowed to register and vote.**

Those in line at the time the announcement is made that the polls have closed, provided they are qualified voters, must be allowed to vote. Those that arrive at the polling place after the

announcement is made that the polls have closed may not be allowed to vote. The door to the polling place should not be locked until the counting of ballots is complete and the results have been publicly announced.

In the event the hours of polling are extended by a federal or state court order, the moderator shall follow the guidelines in RSA 659:26-a. See extended hours voting at page 60.

## **B. AFTER THE POLLS HAVE CLOSED**

### **SET UP THE POLL FOR COUNTING**

Once the moderator has announced that the polls are closed and the last voters who were waiting in line to vote have had the opportunity to vote, the moderator should immediately proceed to set up the voting area for the counting process. RSA 659:60.

No person other than an election official is permitted to be within 4 feet of the counting, although it is important to remember that the counting process is public. The tables should be drawn together to afford the election officers ample room to spread out the ballots for counting. RSA 659:63.

### **PROCESSING AND CASTING THE ABSENTEE BALLOTS**

Absentee ballots must be processed before any counting takes place. The moderator must announce in a loud voice so that everyone in the hall can hear that he or she is about to begin processing the absentee ballots. Absentee ballots must begin to be processed and cast into the ballot box at 1:00 p.m. unless 10 or more voters present at the polls submit a written objection to the moderator. If they do, then the processing of the absentee ballots shall be done as soon as the polls close, **but before any ballots are counted**. Any absentee ballots received in the mail after 1:00 p.m.

shall be processed as soon after receipt as possible. **No ballots may ever be counted before the polls close.** RSA 659:49; RSA 659:50.

First the moderator opens the outer mailing envelope, being careful not to mar or tear the affidavit envelope. The moderator then compares the signature on the affidavit envelope to that on the absentee ballot application which the clerk attached to the return envelope at the time the ballot was received. If:

- a. The name of the voter is on the checklist;
- b. The affidavit on the envelope appears to be properly executed;
- c. The signatures on the affidavit and the application appear to be those of the same person;
- d. The signatures appear to be those of a duly qualified voter who has not voted at the election; and
- e. The name of the voter is not on the checklist, but he or she has provided the proper documents to become registered,

then the moderator shall publicly announce the name of the absentee voter. RSA 659:50. An exception to public announcement exists for non-public voters, voters who have established that they are under a protective order due to being a victim of domestic violence. The clerk and moderator should process non-public absentee ballots without publicly disclosing the voter's name.

If the moderator finds that any of these conditions has not been met, he should not open the affidavit envelope. The test for whether the application and affidavit appear to be signed by the same person is whether this is more likely than not. Absentee ballots should be rejected because the signatures do not match only if the differences in the signatures are significant. If an absentee ballot is rejected the moderator should write the words "Challenged Ballot Number \_\_\_\_"

and the reason (such as "rejected as not a voter," "voted in person" or "affidavit improperly executed") for the rejection across the envelope. The ballot should not be cast but must be preserved in the unopened envelope.

If the moderator finds that all of the conditions have been met, he may proceed with announcing the name of the absentee voter. The ballot of the absentee voter is now subject to challenge from any other voter or challenger in the town or ward.

## **CHALLENGES TO ABSENTEE BALLOTS**

If a challenge is made, the challenger must state the reason for the challenge. Regardless of the merit of the challenge, the moderator should then mark the ballot "Challenged Ballot Number \_\_\_\_" and write the name and address of the person making the challenge and the basis for the challenge on the affidavit envelope.

Each challenged ballot must be numbered in sequence, the first so challenged being number 1 (Challenged Ballot #1, etc.)

The moderator then must determine if the basis of the challenge is well-grounded. Questions as to whether a person is qualified as a voter must be determined by the supervisors of the checklist. If the moderator decides the challenge is well grounded, the ballot should not be cast, but kept with spoiled ballots.

If there is no challenge, or if the moderator, where appropriate with assistance of the supervisors, determines that a challenge to a ballot is not well grounded, the moderator shall proceed to open the affidavit envelope, being careful not to unfold the ballot so that any of its marks may be seen. The mark "A.V." must be placed against the name of the absentee voter on the checklist in red ink.

If the ballot was challenged but the moderator had rejected the challenge (i.e. accepted the ballot), then the moderator must mark the reverse side of the folded ballot with the same challenge number as he wrote on the affidavit envelope when the challenge

was made. The moderator then casts the ballot with all the other ballots, by placing the ballot in the ballot box or putting it into the voting machine.

The moderator should save all the envelopes opened and unopened and keep them with all the ballots cast at the election. These materials are retained and preserved in accordance with the laws governing the retention, preservation and destruction of ballots.

Once all the absentee ballots have been cast or rejected, the ballot box can be opened and the counting process begun for each office on the ballot, referendum questions and any constitutional amendments. RSA 659:51-53.

## **COUNTING THE BALLOTS**

The moderator is responsible for supervising the counting of ballots. The town clerk, selectmen, and other election officials should participate in the counting process as directed by the moderator. RSA 659:60.

The moderator makes the decision on how ballots are to be counted and each moderator should devise a system for counting ballots which is accurate and which will expedite the process.

There are several proper ways to count ballots. See model instructions for counting ballots at pages 144 -149 for examples of how some towns hand count ballots.

## **DISQUALIFICATION OF ELECTION OFFICIALS IN COUNTING PROCESS**

Any election official, other than the moderator, who is a candidate for office may not participate in the counting of votes for the office for which that person is a candidate. The moderator shall fill any vacancy so occurring. If the counting of ballots is accomplished by means of teams counting the whole ballot, rather than each specific office, an election official whose name



appears on the ballot may not participate in any of the counting. Such officials can, however, participate in counting a different ballot. For example a candidate for town office may count the school district ballot. RSA 658:24; RSA 659:58.

## **COUNTING BALLOTS AT ADDITIONAL POLLING PLACES**

Ballots may be counted at an additional polling place if the moderator for the town or ward has authorized such beforehand and in writing. In this case, the assistant moderator with the assistant clerk and other election officers may tabulate the votes at the additional polling place. RSA 659:59.

After the votes at the additional polling place are tabulated, the assistant moderator should place the counted ballots back in the ballot box. This process should be certified by the clerk and witnessed by the election inspectors. The duplicate checklists, cast ballots, spoiled ballots, and unused ballots shall be sealed in the ballot box. A written report of the tabulation signed by the assistant moderator and assistant clerk should then be delivered with the sealed ballot box to the moderator at the central polling place. RSA 659:59.

If counting has not been authorized by the moderator, then upon the close of the polls, the assistant moderator should close the ballot box and seal it in the presence of the election inspectors. He must then seal the duplicate checklists together with the spoiled and unused ballots. This whole process must be certified by the assistant clerk. All of these materials must be returned to the moderator at the central polling place by two designated election officers, one from each of the two major political parties. RSA 659:62.

The moderator at the central polling place then proceeds to count the ballots from the additional polling place.

Regardless of where the counting takes place, the final tabulation of all votes from a town or ward should be announced as a single total.

## **WHAT CONSTITUTES A LEGAL VOTE**

The overriding consideration of how to count a ballot is the voter's intention. Determining the intention of a voter ultimately requires a common sense judgment by the election officials. Remember: the whole thrust of our election laws and their application is to enfranchise as many citizens as possible and to count their votes whenever possible. RSA 659:64.

## **GUIDELINES IN DETERMINING LEGAL BALLOTS**

If there is a question concerning the vote on a ballot for a particular office, only the vote for that office shall be affected, and the rest of the ballot should be counted.

If a voter votes for more names than there are persons to be elected to that office (overvote), his ballot shall be regarded defective for that one office and the vote shall not be counted for that office. The ballot is treated as if the voter did not vote for any candidate or for either choice of a question. It is helpful in reconciling ballot counts to have counting teams record the number of abstentions, including overvotes, for each contested office or question. See the Election Night Reconciliation, page 110.

If a voter marks a straight ticket, but clearly cancels out the name of a candidate for a particular office in that party, then no vote should be counted for that particular candidate.

If a voter marks a straight ticket and then votes for an individual candidate for a particular office, then the straight ticket vote for that office is not counted, but the vote is counted for the individual candidate so marked. RSA 659:66.

Straight ticket voting is not required. An individual may vote for one or more candidates by making the appropriate mark (i.e. an X for hand count style paper ballots or fill in the oval for Accuvote ballots) opposite the name(s) or by

writing the name(s) on the write-in line and filling in the oval beside the name.

**Write-ins:** To vote for a candidate by write-in on a paper ballot, the voter needs only to write the name of the person he wishes to vote for on the appropriate line. A mark does not need to be placed in the square opposite the write-in line.

However, when a voter is writing in his choice of a write-in candidate on the Accuvote ballot, in addition to writing in the name, the oval **must be filled in**. This is necessary so that the scanner will know that a write-in vote has been made by the voter. If the oval is not filled in the ballot will be sent to the bin under the machine where the fully counted ballots are sent. Unless all those ballots are checked for write-ins where the voter failed to fill in the oval, the write-in will not be counted. If the ballot is counted by hand on election day or in a recount, and the appropriate mark is not made next to the write-in line, the write-in vote is counted. This is one reason why recount results sometimes vary from machine counts on election night. If the margin of victory between a write-in candidate and a competitor is equal to or smaller than the number of ballots reported on the machine results as blank, the ballots in the bin for fully counted ballots should be visually inspected to ensure that there are no ballots with write-in votes where the voter failed to fill in the oval.

In the case of a write-in vote for a candidate whose name also appears on the ballot as a nominee of a party for the same office, the ballot shall be counted as one vote for that candidate for that office. RSA 659:67. Votes cast for the same person for the same office on the ballot of different parties at any primary shall not be added together but shall be credited to the party on whose ballot the name appears and the vote is cast. RSA 659:69.

Referendum questions should be voted by making the appropriate mark next to the "yes" or "no."

No ballot without an official endorsement shall be inserted in the ballot box or counted, except unofficial ballots prepared in the event of exhaustion of the supply of official ballots. RSA 659:65.

If a voter chooses to write in the name of a candidate he supports rather than marking the appropriate box for that same person printed as a candidate on the ballot, the vote is considered valid.

If a ballot does not readily lend itself to a determination of the voter's intention, the ballot shall be counted in accordance with a majority vote of the election officials present. If no particular count of that ballot can be decided by majority vote, that ballot shall be considered defective for that office. RSA 659:64.

## VALID VOTING MARKS

A. If a cross "X" is marked on a ballot in an imperfect manner, it shall be counted if it is possible to determine the intention of the voter from the mark.

B. The mark also is valid outside the square if it is near enough to the square or in line with the name such that it indicates the intent of the voter.

C. A double cross is valid if it is distinguishable from an attempt to obliterate a ballot.

D. Cross marks are a directive of the law and are not mandatory. The uniform use of a mark other than "X" is clearly a valid marking of the ballot. The shape of the mark may change somewhat or be somewhat irregular and still be considered uniform and therefore valid.

E. When there is a different kind of mark (i.e. a ballot marked with checks and crosses intermingled) the marks may be valid.

F. Erasures and obliterations: When two candidates have marks and one of the marks is erased or obliterated, the ballot counts for that office only if the erasure or obliteration is complete.

G. When examining a questionable mark, look at how the voter has marked other races or questions. The pattern of marking used in other

areas of the ballot may reveal the intent of the voter.

**IMPORTANT: There may be only one vote per ballot per candidate for an office.**

## REPORTING THE VOTE RESULT

The moderator should report the result of the vote count to the public after the count has been completed.

Prior to making the announcement the vote totals should be rechecked for any obvious tabulation errors such as missing or double counting tallies done by one counting team. Comparing the vote totals for each office or question against the total number of persons checked off on the checklist as having voted and to the total number of ballots used looking for obvious discrepancies such as a vote total larger than the number from the checklist or number of ballots used is one recommended cross-check. To avoid obvious mistakes, reconciliation practices on page 110 are strongly recommended. Many moderators ask someone with an accounting or bookkeeping background to assist with the final reconciliation, bringing a fresh set of eyes to check if the numbers make sense before the results are announced. Unless each write-in and ballot where no vote is cast for a given race or question is accounted for, the totals are not expected to match exactly; however, if the tallies from one counting team have been omitted or double counted, such an error will usually become obvious when doing this type of cross-check.

After all state election ballots have been counted, the town or ward clerk must report the results upon the Return of Votes forms provided by the Secretary of State as soon as possible. The ward clerk should send copies to the city clerk. The city or town clerk should also keep a copy of the Return of Votes. RSA 659:75.

## SPOILED AND UNUSED BALLOTS

The spoiled and unused ballots shall be preserved in suitable containers with the cast ballots. See Retention Chart on page 121. RSA 659:95.

## SECURING THE BALLOTS

After the ballots have been counted and a declaration and record of the result has been made, the moderator in the presence of the selectmen shall put the cast, canceled and unused ballots in suitable containers. Each container must be securely sealed and signed by the moderator and selectmen.

**Do not put marked checklists, tally sheets, or any other documents that may be needed later in with the ballots.**

The containers should be sealed with filament tape, as provided for each election by the Secretary of State and upon which is printed the following:

Enclosed are the ballots from the  
state election in the town of \_\_\_\_\_  
(or in ward \_\_\_\_ in the city of  
\_\_\_\_\_) held on \_\_\_\_\_, 20\_\_\_\_  
required by law to be preserved.

Local officials should make certain that they have suitable containers available for preserving ballots after any local election. RSA 659:95; RSA 659:97. The town officers designated to deliver the ballots by the clerk should deliver the cast and counted ballots in their sealed container to the town or city clerk. The clerk shall subscribe upon the label the hour when he or she received the ballots and sign his or her name in the place provided. RSA 659:98. The clerk shall preserve these ballots for 60 days after a local election. The ballots used for federal races must be preserved for twenty-two months. If a recount is requested for a state election, the ballots will be collected by the Secretary of State. If a recount is conducted for a local election, the ballots must be retained for at least 60 days from the date of the recount unless some action regarding those ballots is pending, in which case they must be preserved

until the courts have made a final ruling and either the appeal period has ended or the appeal is final. RSA 659:98-100; RSA 669:33.

## **IV. POST ELECTION DAY**

### **CERTIFYING THE WINNERS**

Following a primary election, the Secretary of State will directly notify all persons who won a nomination by write-in. RSA 659:89.

Following a state general election, the Governor or Secretary of State will issue a certificate of election for all state and county officers-elect after the time for any recount has passed. RSA 659:84.

### **PRESERVATION OF CHECKLIST**

After each state general election and a presidential primary, one marked copy of the checklist used at the election must be forwarded to the State Archives in Concord.

RSA 654:45 authorizes the Secretary of State to provide ElectionNet (SVRS) data to the Administrative Office of the Courts and to the Federal District Court to assist in the preparation of master jury lists. The Secretary of State has communicated to the Administrative Office of the Courts indicating that it will furnish the required information to them.

Names of voters who registered to vote and who voted in any state primary or state general election shall be included on the checklist and marked as such by the supervisors. Those voters shall be included on the voter checklist and ElectionNet (SVRS) for all future federal, state and local elections, so long as they are qualified to vote in these elections. RSA 654:7-b.

After every election, state or local, the town or city clerk must preserve a marked copy of the checklist as a public record for a period of at least 5 years. RSA 659:102.

Election officials should use the bar code scanner to record in ElectionNet whether or not a voter cast a vote during the most recent election. This record will enable election officials to discover and help prevent voter fraud.

## V. TOWN ELECTIONS

### OFFICIAL VS. UNOFFICIAL BALLOT SYSTEMS

Every town in New Hampshire elects officers and conducts certain town business using either unofficial ballots, partisan official ballots or non-partisan official ballots. In order to use either partisan official or non-partisan official ballots for election of officers, a town must vote to adopt such a system at a town meeting. All towns which have never voted to adopt an official ballot system or which have voted to rescind the use of official ballots are to conduct business by unofficial ballots. RSA 669:11-14.

Any vote to adopt or rescind the use of partisan or non-partisan official ballots shall not take effect until the next following town election.

**Election Day Registration** - Any person may register to vote with the supervisors of the checklist at any election (i.e. primary and general elections, town, city, school district and village district elections). The applicant must provide proof of identity, age, citizenship and domicile as required by RSA 654:12.

For the purposes of this section "election" refers to any voting at which absentee ballots are provided.  
"Meeting" refers to the deliberative session of the town, school, or village district meeting.

### FILING FOR OFFICE

Towns that have adopted official ballots must print ballots in advance of the town election. If the town uses partisan official ballots, a party caucus as provided in RSA 669 nominates candidates for the town offices. RSA 669:37-51. The caucus chairman and clerk shall certify names of party nominees. As an alternative to nomination by party

caucus, a candidate may have his name placed on a partisan town election ballot by submitting nomination papers. RSA 669:18; RSA 669:49; RSA 669:52.

If the town uses non-partisan official ballots, candidates who desire a certain office must file a declaration of candidacy with the town clerk during the 10 day filing period which begins on the seventh Wednesday before the town election. A candidate must, at the time of his filing, pay the clerk a filing fee of \$1 unless the office he seeks offers no salary or other compensation. If lieu of the fee, a candidate may submit 5 nomination petitions unless the town has previously voted to require a number larger than 5. RSA 669:10-21.

Towns using unofficial ballots may entertain nominations from the floor at town meeting for people who wish to run for office.

ElectionNet is designed to assist Clerks with the preparation of municipal election ballots. By using ElectionNet to prepare the ballots the Clerk will also be setting up the Accessible Voting System, the phone-fax system, to be available for use by voters with disabilities.

### WITHDRAWAL OF CANDIDACY PROHIBITED

After a filing period for a non-partisan town election, or after a caucus has certified a nominee for a partisan election, the town clerk may not accept withdrawals of candidacy unless the candidate dies or makes oath that he does not qualify because of age, domicile or incapacitating physical disability acquired subsequent to his filing. RSA 669:22.

### ABSENTEE VOTING

Towns using official ballots must provide for absentee voting whenever official ballots are used. Absentee ballots and other absentee voting materials must be prepared and sent out by the town clerk. RSA 669:26-29.

## POLLING HOURS

Polling hours for an official ballot vote must be fixed either by action of a previous town meeting or by a vote of the board of selectmen. Polling hours must be posted as beginning at a certain time and ending not earlier than another hour.

The meeting may vote to extend these hours, but may not vote to shorten them. The polling hours and polling place must be posted in a warrant which clearly states which items are to be voted on by official ballot. Where unofficial ballots are going to be used, the warrant must state the place, date, and hour of the meeting, the items to be considered and the officers to be elected. RSA 669:2; RSA 669:25.

## USES OF OFFICIAL BALLOTS

Most towns in New Hampshire and all cities use official ballots to elect officers. Any town may vote to adopt partisan official ballots or non-partisan official ballots for the election of town officers.

Some statutes require votes on certain questions to be taken by official ballot. For instance, RSA 41:8-b states that the question of whether a town will increase the membership of the board of selectmen must be printed on an official ballot. The language of the question is fixed by law. If the town does not use official ballots, the clerk is instructed to prepare a printed ballot for that question.

In other instances, the clerk would print the question on an official ballot only if that town uses official ballots for election of officers. Such is the case with the question of combining the offices of town clerk and tax collector. (RSA 41:45-a.) If the town does not use official ballots, the question would be voted on by unofficial ballot (yes-no ballot) at the town meeting.

In most circumstances, unless a specific question is outlined in a statute with a specific direction that the question is to be placed on the official ballot, that question shall not be printed on an official ballot. The law authorizes, but does not require,

the use of an official ballot for certain questions where state law prescribes specific wording to be printed on a ballot for an article to be put to the voters. The vote on any other such question would be taken by voice vote, a division vote, or by a yes-no ballot vote at the town meeting. RSA 39:3-d.

## PRINTING OFFICIAL BALLOTS

Every official ballot has 2 sides - an office side on which any offices to be filled or questions to be voted on are printed - and an endorsement side.

**Office side:** This side of the ballot should resemble the state primary election ballot if the election is:

- a. a non-partisan town, school or village district election; or
- b. a partisan city primary election.

The office side should resemble the state general election ballot if the election is:

- a. a partisan town election; or
- b. a partisan city general election.

The office side of a ballot is identical on regular, absentee and sample ballots. Absentee ballots must be printed on the same color paper as regular ballots. The order of offices, while dictated by state law for state elections, is left to the discretion of the town or city clerk for local elections. Most town clerks print the offices which a town is required to elect first on the ballot - moderator, selectman, town clerk, and supervisors of the checklist. Optional offices such as auditor, sewer commissioner, constable, etc. are usually printed further down on the ballot. Names must be printed in alphabetical order of surname. RSA 669:23.

Questions to voters to be printed on an official ballot may be printed beneath the offices to be filled or on a separate ballot at the discretion of the town clerk. Questions should be followed by the words YES and NO with boxes for the voter to indicate his or her preference.

# CHECKLIST FOR THE OFFICIAL BALLOT

## OFFICE SIDE

Is everything spelled correctly?

Are the offices in logical order?

Is all the print uniform and legible?

Are names of candidates in alphabetical order by surname if more than one name appears for that office?

Are absentee ballots and regular ballots printed on the same color paper as required by RSA 669:24?

Have you made sure to print sufficient numbers of regular, absentee and sample ballots?

Is there a blank line for each office to enable voters to write in their choice(s)?

## ENDORSEMENT SIDE

The endorsement side of an official ballot is the same for partisan and non-partisan ballots and includes:

Name of town or city (ward).

Date of election.

Type of election - town election, special town election, municipal primary election, etc.

Facsimile signature of town or city clerk. Town or city seal (optional).

## FOLDING OFFICIAL BALLOTS

All paper ballots must be folded with the endorsement side showing so that a voter's marks cannot be seen. Absentee ballots must be folded small enough to fit into an affidavit envelope.

Official Accuvote ballots do not need to be folded. A privacy folder should be provided for those voters who wish to use them.

Sample ballots should not have the signature or facsimile of the signature of the clerk. Should someone make copies of a sample ballot on the paper color of the official ballot, the absence of the clerk's signature will reveal that it is not an official ballot.

## RECOUNTS OF TOWN ELECTIONS

A candidate for town office may request a recount of the ballots cast. The application must be in writing and submitted to the town clerk with the applicable fee as set forth in RSA 669:31. See fee schedules at pages 84 and 158. The deadline for applying is 5 p.m. on Friday of the same week.

The clerk then appoints a time for the recount which is not earlier than 5 days, nor later than 10 days after receipt of the application. This period allows all recounts requested for an election to be held at one time if the clerk so wishes. The clerk must notify each candidate of the scheduled date of the recount at least 3 days prior to the recount. RSA 669:30-31. See model notice at page 157.. The notice should include information on the number of recount teams that will be used so that the candidates have the opportunity to bring an appropriate number of representatives so that the candidate or a representative can watch each recount team.

A board of recount composed of the town clerk, moderator and selectmen conducts the recount. A recount officer whose election is being recounted must disqualify himself or herself from the recount. The moderator would then appoint a replacement. Candidates or their representatives ought to be given an opportunity to view, but not handle, the ballots at the recount and to record any protest they have as to how any particular ballot is counted. RSA 669:32.

“When counting ballots [during a recount] the board of recount or their assistants shall visually inspect each ballot. No mechanical, optical, or electronic device shall be used for the counting of ballots”. RSA 669:32.

Following the recount, the ballots are resealed and preserved by the town clerk for at least 60 days unless otherwise instructed by a court. RSA 669:33.

No person shall assume a town office until the time period for requesting a recount is over. If a recount is requested for a town office, no person shall assume that office until the recount is completed. RSA 669:10.

Any 10 voters of a town may request a recount of a question appearing on the official ballot by applying to the town clerk (or school district clerk in the case of school district questions appearing on the school district ballot). If they do so in writing before the expiration of 7 days from the election (or the special meeting), the clerk shall appoint a time and place for the recount not earlier than 5 days nor later than 10 days after receipt of said request. The fee is \$10. RSA 40:4-c; RSA 669:30-32; RSA 671:32.



## VI. ELECTION OFFICIALS AND THEIR RESPONSIBILITIES

### TERMS OF OFFICE - TOWNS

#### WHO IS AN ELECTION OFFICER?

**Election Officer:** “Election Officer” shall mean any moderator, deputy moderator, assistant moderator, town clerk, deputy town clerk, city clerk, deputy city clerk, ward clerk, selectman, supervisor of the checklist, registrar, or deputy registrar. RSA 652:14

#### ELECTION OFFICER VERSUS AN ELECTION OFFICIAL

The term “election official” is not defined by statute. The terms “election officer” and “election official” are used in the election law in manner that suggests they are interchangeable.

**MODERATOR:** Elected for a two year term at the annual meeting, in towns every even numbered year, in cities every other regular city election. RSA 40:1.

**TOWN CLERK:** Elected for a one year or three year term, depending upon which option the town voted to enact. RSA 41:45-a; RSA 41:2-a; RSA 41:16-a; and RSA 41:26-b.

**SELECTMAN:** Elected for a three year term at the annual meeting. RSA 41:8 through 8-e.

**SUPERVISOR OF THE CHECKLIST:** Elected for a six year term, one elected every even numbered year. RSA 41:46-a.

**INSPECTOR OF ELECTION:** There shall be two inspectors from each of the two parties that received the largest number of votes in the last previous general election. RSA 658:2. Each inspector of election shall be sworn and hold office for two years from November 1 in the year he is

appointed or until a successor is appointed and qualified.

### TERMS OF OFFICE - CITIES

**SOME ELECTION LAWS ARE DIFFERENT IN CITIES AS COMPARED TO TOWNS.** City government operates under the home rule powers recognized by part 1, article 39, of the New Hampshire Constitution. To that end, the general court has provided cities the authority to adopt charters which allow, with limitations intended to ensure uniform procedures and practices, to adopt a form of government that best addresses local needs. RSA 49-B:1. Cities, therefore, operate under their own charters, which once adopted can be amended and revised. Since each New Hampshire city can adopt a charter which suits its own needs, each city in the state has variations in its charter. Therefore, city election officials, their terms of office, duties and titles may differ from those in towns.

**CITY ELECTION OFFICIALS.** Typically city election officials include the City Clerk, the Ward Clerk(s), three Ward Selectmen, Ward Moderator, Checklist Board of Supervisors(s) or in some cities Registrars and Deputy Registrars.

### HOW CITY ELECTION OFFICIALS ARE CHOSEN

- **City Clerk:** RSA 48:2 provides that a city council, being met in convention upon the day appointed by law or ordinance, shall by joint ballot elect a city clerk.
- **Ward Clerks, Ward Selectmen, Ward Moderator:** Shall be elected in each of the wards, and shall have the powers, perform the duties, and be subject to the liabilities of those offices in towns, so far as it relates to the warning of meetings, conducting elections, counting and declaring votes, and all other matters relating to elections. RSA 44:12.

- **Board of Supervisors of the Checklist, Typically Called Registrars in Cities:** Shall be elected in each of the wards, and shall have the powers to prepare, post and revise the checklist for city elections. RSA 44:5.
- **Inspectors of Election:** The same appointment process that is followed in towns.

## **SWEARING IN OF ELECTION OFFICIALS**

**OATH OF OFFICE.** The moderator, town clerk, one of the selectmen or a justice of the peace may administer the oath of office. RSA 42:2.

Every town officer shall make and subscribe the oath or declaration as prescribed by part 2, article 84, of the Constitution of New Hampshire and any person who violates said oath after taking the same shall be forthwith dismissed from the office involved. RSA 42:1.

Except as otherwise provided, the term of any town officer elected shall begin upon his or her election and qualification for office and shall end upon the election and qualification of his or her successor. RSA 669:10, I; RSA 41:3. No person shall assume a town office until after the time period for requesting a recount is over. If a recount is requested, no person shall assume that office until the recount is completed. RSA 669:10, II. Taking the oath of office constitutes assuming office. State officers assume office on the date set by the New Hampshire Constitution and County officers assume office on the first Wednesday after the first Tuesday in January of the year following the state general election at which they were elected. RSA 653:10.

**WORDS IN THE OATH OF OFFICE.** The oath of office is set forth in the New Hampshire Constitution at Part 2, article 84. RSA 42:1; RSA 21:24; RSA 21:25. All town officers must take the

oath of office. RSA 669:9. See page 129 for the words in the oath.

## **SWEARING IN OF PERSONS ASSISTING INDIVIDUALS REQUIRING ASSISTANCE**

Immediately before each event when a person assists another requiring assistance in voting, the voter requiring assistance should first swear an oath requiring assistance, and the person providing assistance should secondly swear an oath that he or she will not influence the voter. See words in the oaths on page 130. RSA 659:20.

## **MANNER OF DISMISSAL – BREACH OF CONFIDENTIALITY**

A town officer who violates his or her oath of office can be dismissed by the Superior Court. A party seeking dismissal of a town officer must file a petition with the Superior Court. In addition to other violations of the oath of office, a town officer may be dismissed for the improper disclosure to the public of certain confidential information which that officer learned by virtue of his or her public office. RSA 42:1-a.

## **VACANCIES IN ELECTION OFFICES**

**WHAT IS A VACANCY?** A vacancy in public office occurs when:

- A person dies, resigns or ceases to be domiciled in the state or district from which he was elected. RSA 652:12, I.
- Is determined by the court to be insane or mentally incompetent. RSA 652:12, II.
- Is convicted of a crime which disqualified him or her from holding office. RSA 652:12, III.
- Fails or refuses to take the oath of office within the period prescribed in RSA 42:6 or to give or renew an official bond if required by law. RSA 652:12, IV. This

would include a situation where a person is elected to office, but subsequently concedes that he or she is not qualified to hold office and for that reason fails or refuses to take the oath of office.

- Has his or her election voided by court or Ballot Law Commission decision. RSA 652:12, V.
- Is a State Representative or State Senator and a member of the military reserve or National Guard, is unable to perform his or her legislative duties because of military service, as determined by the House for House members and the Senate for Senators, for more than 180 consecutive days and the selectmen from any town the Representative or Senator represents requests that the Governor declare the office vacant. RSA 652:12, VI.
- The Superior Court has dismissed an officer pursuant to RSA 42:1-a.

See also RSA 654:1.

**TEMPORARY ABSENCES** A vacancy should not be confused with a temporary absence. A temporary absence means that a certain official, still qualified to hold a position, is sick, out-of-town, or otherwise unable to perform his duties for a certain period of time.

Temporary absences among election officials must be filled under the provisions of RSA 658:19-23. Vacancies in town offices must be filled as provided in RSA 669:61-75. People serving in the absence of an official serve only until the officeholder returns to service. People appointed to fill vacancies serve until the next annual town election when a person is elected to fill the unexpired term, unless otherwise stated. RSA 669:61; RSA 658:24. For certain offices, such as Trustee of the Trust Fund or Highway agent, the appointee serves the remainder of the unexpired term. RSA 669:73; RSA 669:74.

**HOW IS A VACANCY FILLED?** Whenever a vacancy occurs in any elected town office or whenever a town neglects or refuses to fill an elective town office, said vacancy shall be filled by the action of that body or person authorized by law

to appoint or elect such officer for a term ending upon the election and qualification of his or her successor, unless otherwise provided. At the next annual town election, unless otherwise provided by law, the voters of the town shall then elect an officer for the full term provided by law or the balance of an unexpired term provided by law, as the case may be. RSA 669:61.

**WHO FILLS THE VACANCY FOR TOWN MODERATOR?** Vacancies shall be filled by appointment made by the supervisors of the checklist, or by the town selectmen where no board of supervisors exists. RSA 669:62.

**WHO FILLS THE VACANCY FOR SELECTMEN?** Vacancies shall be filled by appointment made by the remaining selectmen. Whenever the selectmen fail to make such appointment, the Superior Court or any justice thereof, on petition of any citizen of the town may appoint a suitable person. RSA 669:63.

**WHO FILLS THE VACANCY FOR SUPERVISOR OF THE CHECKLIST?** Vacancies shall be filled by the remaining supervisors. If there is only one member or the entire board is vacant, the moderator shall make the appointments. If the supervisors are elected by the partisan ballot system, the appointee shall be of the same political party as the supervisor whose place he or she is filling. Currently, in New Hampshire there are no towns that use the partisan ballot system, therefore, appointees may be from any party. RSA 669:64. Vacancies in the office of a city registrar would be filled in the same manner unless the city charter makes another provision for filling the vacancy.

**WHO FILLS THE VACANCY FOR TOWN CLERK?** Vacancies shall be filled by appointment made by the selectmen except in towns where pursuant to RSA 41:18, the clerk, with approval of the selectmen, has previously appointed a deputy town clerk, in which case the deputy shall serve as town clerk until the next annual meeting. RSA 669:65.

**WHO FILLS THE VACANCY FOR TOWN CLERK TAX COLLECTOR?** If a vacancy occurs, the deputy provided for in RSA 41:45-c shall discharge the duties of the town clerk-tax collector until the selectmen fill the position within 30 days. RSA 669:66.

**WHO FILLS THE VACANCY FOR INSPECTOR OF ELECTIONS?** Town and ward political committees or town and ward selectmen may designate a list of alternates who shall meet the same qualifications as inspectors of elections, to be called in numerical order to serve in case one or more of the appointees fails to accept the appointment or is otherwise unavailable to perform his or her duties. RSA 658:5. If the parties have not made appointments and made proper notification of those appointments by October 15, then the Selectmen shall appoint Inspectors of Elections in equal numbers from the two political parties. RSA 658:2. In case any appointment is not made as provided in RSA 658:2 or RSA 658:5 or vacancies are not filled as provided in RSA 658:22, then on application of 6 qualified voters of the town or ward, a justice of the municipal or district court shall appoint the inspectors. RSA 658:6.

Cities should consult their city charter when a vacancy occurs. If the charter offers no procedure for filling a vacancy, state law may provide a procedure for filling a vacancy in a corresponding town office. If this fails, the city council may decide.

## **ABSENCES ON ELECTION DAY**

**TEMPORARY ABSENCE** A temporary absence means that a certain official, still qualified to hold a position, is sick, out-of-town, has recused himself or herself because he or she is running for an office other than that of an election officer or is otherwise unable to perform his or her duties for a certain period of time.

**DISQUALIFICATION OF OFFICIALS WHO ARE ON THE BALLOT** An election official may work the polls even though his or her name is on the ballot for a position as an election

official. Anyone whose name appears on the ballot for a position other than an election official is disqualified from performing his or her duties as an election official in that election. This disqualification creates a temporary absence. For example, a moderator is an election official. A moderator who is running for re-election is not disqualified from serving as moderator at the election where his or her name is on the ballot. If that moderator, however, is running for a different position, for example as State Representative, he or she would be disqualified. RSA 658:24.

**HOW IS A TEMPORARY ABSENCE FILLED?** Temporary absences must be filled under the provisions of RSA 658:19-23, which states: an election officer pro tempore shall have all the powers and duties of the officer he replaces as provided in the election laws and shall take the oath of office in like manner.

**HOW LONG DOES THE PRO TEM OFFICER SERVE?** The term of office shall expire at the termination of the proceedings at the election for which he or she was appointed. RSA 658:23. For example a moderator pro tem would serve until the results were announced and the ballots sealed up on election night, unless there is a recount, then until the recount is completed.

**MODERATOR PRO TEM** If the moderator is absent from an election or unable to perform his or her duties, a moderator pro tempore shall be appointed by the moderator. RSA 658:19.

**CLERK PRO TEM** If the town or ward clerk is absent or unable to perform his or her duties and there is no deputy clerk as provided in RSA 41:18, a town or ward clerk pro tempore shall be appointed by the town clerk. RSA 658:20.

**SUPERVISOR PRO TEM** If more than one member of the board of supervisors is absent or unable to perform his or her duties, a supervisor pro tempore shall be appointed by the moderator. RSA 658:21.

**INSPECTOR PRO TEM** If any of the appointed inspectors of election shall be absent or unable to perform his or her duties, the selectmen shall appoint some person qualified as provided in RSA 658:3, using the list of alternate appointees provided under RSA 658:4, unless no person on said list is available. RSA 658:22. If the Selectmen have failed to provide adequate inspectors, the moderator may also use his or her general authority to appoint election officials to appoint inspectors pro tem. RSA 658:7.

**SELECTMEN PRO TEM** Although there is no specific RSA dealing with selectmen pro tempore, there are three RSAs which may address this issue. RSA 658:7 states that the moderator may also appoint such other election officials as he deems necessary. The other election officials shall take the oath of office and perform such duties and have such powers as the moderator may delegate to them. RSA 659:95, which deals with the sealing and certifying of ballots, states the moderator or his or her designee and the selectmen or their designees shall sign their names in the appropriate blanks on the sealer. Therefore, at least for that purpose the selectmen may designate person(s) to perform this duty.

## INCOMPATIBILITY OF OFFICES

There are several offices in town government for which a person may not serve while holding another office. RSA 669:7 deals with these offices as follows:

- No person shall at the same time hold any two of the following offices: selectmen, treasurer, moderator, trustee of trust funds, collector of taxes, auditor and highway agent.
- No person shall at the same time hold any two of the following offices: town treasurer, moderator, trustee of trust funds, selectman, and head of any police department on full time duty.

- No person shall at the same time hold the office of town treasurer and town clerk.
- No full time town employee shall at the same time hold the office of selectman.
- No official handling funds of the town shall at the same time hold the office of auditor.
- No selectman, moderator, town clerk, deputy town clerk or inspector of election shall at the same time serve as supervisor of the checklist.
- No selectmen, town manager, school board member, (except a cooperative school board member,) full time town, village district, school district employee (except a cooperative school district employee,) or their associated agency employee or village district commissioner shall at the same time serve as a budget committee member at large under RSA 32.

The provisions above refer to the actual holding of office and are not to be construed to prevent the transfer between offices of information obtained in the regular conduct of business nor to prevent the personnel in any office from furnishing clerical assistance to any other office.

A town manager may be elected or appointed to any municipal office that would be subject to his or her supervision; but may not hold any other public office. For example if the town road agent is supervised by the town manager, but the police chief is supervised by an elected police commission, the town manager could be elected or appointed as road agent, but not as police chief. RSA 669:8.

## **VII. INSPECTORS OF ELECTION**

### **APPOINTMENT OF INSPECTORS OF ELECTION**

Each town and ward political committee of the two political parties which cast the largest number of votes for governor in the state at the last previous general election appoints inspectors of election. RSA 658:2. For school district meetings, conducted separately from the town election, the school board appoints inspectors. RSA 671:28.

**WHEN APPOINTED?** Inspectors are appointed between September 15 and October 15 of each general election year. RSA 658:2.

**HOW MANY ARE APPOINTED?** Two inspectors of election are appointed to act at each polling place. If the number of registered voters at a polling place exceeds 2,000, the political committees may appoint an additional inspector for each 1,500 in excess of 2,000. They also may appoint such additional inspectors as the moderator considers necessary for the efficient conduct of the election. RSA 658:2.

**WHO IS NOTIFIED OF THE APPOINTMENTS?** The appointees and the town clerk, or the ward clerk and city clerk. RSA 658:2.

**WHEN ARE THEY NOTIFIED?** On or before October 15. RSA 658:2.

### **ELECTION DAY DUTIES – INSPECTORS OF ELECTION, BALLOT CLERKS**

Two of the inspectors, one from each of the 2 political parties, shall be designated by the moderator at the opening of the polls to act as ballot clerks. They shall have charge of the ballots and shall furnish them to the voters. RSA 658:25.

The other inspectors shall be assigned such duties in the polling place as the moderator may determine including, but not limited to, the relief of the ballot clerks and the assistance of the illiterate and physically disabled in marking their ballots as provided in RSA 659:20; RSA 658:25.

School district inspectors shall assist the school district moderator in counting votes for school district officers and questions. RSA 671:28.

**WHAT ARE THE INSPECTOR'S QUALIFICATIONS?** They shall be registered to vote at the polling place where they serve. RSA 658:3.

**DO INSPECTORS TAKE AN OATH?** Each inspector shall be sworn to the faithful performance of his or her duties and shall hold office for two years from November 1 in the year in which he or she is appointed or until a successor is appointed and qualified. RSA 658:4. See oath of office at page 129.

**CAN THERE BE ALTERNATES?** Towns and ward political committees or town and ward selectmen may designate a list of alternates, who shall meet the same qualifications as inspectors of elections, to be called in numerical order to serve in case one or more of the principal appointees fails to accept the appointment or is otherwise unable to perform his or her duties. RSA 658:5.

## **VIII. MODERATOR DUTIES**

### **PRE-ELECTION DAY**

#### **MODERATOR TO OVERSEE VOTING**

The moderator is responsible for making certain each election officer understands his or her responsibilities. RSA 659:9. The moderator shall preside in the town meetings, regulate the business thereof, decide questions of order, and make a public declaration of every vote passed, and may prescribe rules of proceeding; but such rules may be altered by the town. RSA 40:4. In cities, the City Clerk may establish uniform city wide procedures that must be followed by the ward moderators.

#### **APPOINTMENT OF ADDITIONAL INSPECTORS OF ELECTION**

If the moderator requests, the political parties, during the time period set forth by law, may appoint an equal number of inspectors as he deems necessary. After the time for appointment by the parties has expired, the Selectmen appoint additional inspectors of election. RSA 658:2.

**MODERATOR PRO TEM** If the moderator is absent from any election or unable to perform his or her duties, he shall appoint a moderator pro tempore. RSA 658:19

**SUPERVISOR PRO TEM** If more than one member of the Supervisors of the Checklist is absent from any election or unable to perform his or her duties, the moderator shall appoint a supervisor pro tempore. RSA 658:21. At a town election a supervisor vacancy shall be filled by the remaining supervisors, unless there is only one, then by the moderator. RSA 669:64.

**APPOINTMENT** The moderator may appoint an assistant moderator and such other election officials as he deems necessary. The town clerk, upon request of the moderator, may appoint an assistant town clerk. RSA 658:7.

**CENTRAL POLLING PLACE** The moderator elected by the town shall preside over the central polling place. He may appoint an

assistant moderator, who must be domiciled in the voting district, to run the additional polling place. RSA 658:11 – 14.

### **ELECTION DAY**

**IN CHARGE.** The moderator is the chief election officer in charge of the polls. It is his or her responsibility to make certain all election officials are available on the day of the election and that each is familiar with his or her duties for the day. New Hampshire Constitution, Part 2, Article 32; RSA 659:9. Prior to the opening of the polls, the moderator should ensure that:

- 3 copies of the Instructions for Voters have been posted outside the guardrail. RSA 658:28.
- 1 copy of the Instructions for Voters has been posted inside every booth. RSA 658:28.
- Sample ballots have been posted outside the guardrail (8 for the state general election and 8 of each party for the primary, and at least several for local elections). RSA 658:26. State law requires a minimum of 2 sample ballots be posted, however, the law also requires the Secretary of State to provide 10 sample ballots, two for posting in advance of the election. Therefore, it is recommended that the remaining 8 be posted.
- At least one sample ballot for the general election and one sample ballot for each party at a primary election is posted no higher than 48" for those voters in wheelchairs. RSA 658:26.
- A notice indicating the time for processing absentee ballots is posted;
- A sharp pencil or pen has been placed in each voting booth.
- Purity of Elections statutes are posted outside the voting area. RSA 658:29.

- 2 duplicate checklists to be used at the election are ready and available. If the town/ward uses Accuvote ballots, only 1 checklist is required.
- All voting machines are zeroed and sealed. RSA 656:42. (Procedure established by the Secretary of State.)

The moderator should then (RSA 658:30-36):

- Count all the ballots delivered to him from the clerk, to establish the number of official ballots. This number must be reported on the moderators certificate, will aid the moderator in anticipating the need for the clerk to prepare extra ballots if there is a heavy turnout, and is available as a cross reference when checking the accuracy of the ballot counting.
- Fill out the two copies of the moderator's certificate if the election is a state election. One copy is for his or her records and one will be returned to the Secretary of State with the Return of Votes.
- Position all officials.
- The ballot clerks sit at the table where the voters first enter.
- The town or ward clerk is positioned at the checkout table by the ballot box.
- The moderator stands where the ballot box is placed and inserts the ballot handed to him by the voter.
- NOTE: If the town/ward uses voting machines, the voter should insert his or her cast ballot into the machine without the assistance of the moderator. The moderator or a designee should still closely monitor the process to provide assistance and ensure that only the proper number of ballots is inserted by any one voter. Privacy folders should be available so that the moderator can watch the insertion of ballots closely

without causing the disclosure of how a voter marked his or her ballot.

- If there are any challengers appointed by either a party committee or the Attorney General, he or she should stand by the incoming check-in table. The challenger must be positioned outside the rail, but in a position where he or she can hear and see each voter as the voter checks in.
- The moderator may place the selectmen, supervisors and any other assistants he deems necessary within the polling place.
- Open the polls punctually at the appointed hour.
- Prior to the first ballot being issued to a voter, inspect the ballot box, show any members of the public present that it is empty. If a ballot counting machine is used, display the zero tape produced by the machine when it is set up and turned on for the election. This tape shows that the starting count for each candidate and question is zero.
- Seal the ballot box.
- Publicly announce that at 1:00 PM the processing of absentee ballots shall begin, RSA 659:49.
- Begin accepting voters. RSA 658:30-36.

RSA 658:26-36.

**ARRANGEMENT OF THE POLLING PLACE.** New Hampshire election laws do not specify any specific arrangement of the polling place. The Secretary of State provides two model arrangements. See diagrams at pages 170 and 171. Variations should ensure that there is some public area outside the rail where the public can watch the election. It is also essential that there is a clear and well marked path from the accessible entrance to the check-in table.



## **OPTICAL SCANNERS AND COMPUTERIZED CASTING OF VOTES.**

Those communities which utilize ballot counting machines shall not be required to have a check-out checklist. The voter should feed the ballot into the ballot counting machine without the moderator directly handling the ballot.

The Attorney General's Office reports complaints from voters, particularly in communities where ballots are printed on two sides, that the voter's right to cast a secret ballot is violated when it is necessary to make the marked ballot visible while carrying it from the voting booth to the ballot counting machine and while inserting the ballot into the machine.

It is strongly recommended that communities using ballot counting machines provide each voter with a privacy folder to carry the marked ballot in. A properly designed privacy folder looks like a typical manila file folder, is wider than the ballot, but slightly shorter. When the ballot is placed in the folder the ballot sticks out of the top just enough to allow the ballot to be fed into the ballot counting machine while the voter holds the sides of the privacy folder.

When a privacy folder is used, it is not possible for other voters standing in line, persons standing outside the rail monitoring the voting, election officials, or the moderator to see how the ballot has been marked.

The privacy folder is turned in to the moderator once the ballot is fed into the ballot counting machine. Because the folders can be recycled back to the ballot issuing table as soon as the voter feeds his or her ballot into the ballot counting machine, it is not necessary to have a folder for every ballot printed. Depending on the size of your community, typically 5 privacy folders for every voting booth will be sufficient.

**ACCESSIBLE VOTING SYSTEM.** The Accessible Voting System, the telephone – fax system which is provided by the Secretary of State and which must be available for use by voters with a disability must be placed in the accessible voting booth provided by the Secretary of State for that

purpose. This booth is ideally set up near the moderator's post by the ballot box/ballot counting machine, to permit the moderator to receive the ballot by hand in a privacy sleeve.

**DISQUALIFICATION OF OFFICIALS.** If an election official, other than moderator, is disqualified the moderator shall appoint an assistant who shall perform the same duties until the official can properly return. RSA 659:58.

**DESIGNATION OF BALLOT CLERKS.** The moderator shall designate 2 of the inspectors of election, one from each party, to act as ballot clerks. RSA 658:25.

**NUMBER OF VOTERS WITHIN  
GUARDRAIL.** The moderator must ensure that the number of voters within the guardrail who have a ballot, excluding those handing the moderator the ballot or feeding it into the vote counting machine, does not exceed the number of voting booths and voting screens. RSA 659:16. When the booth(s) equipped for use by voters with disabilities are open they should be used by the next voter waiting for a booth. These booths equipped for use by voters with disabilities need not be reserved exclusively for use by voters with disabilities. They should be used by all voters.

Voters must not be allowed to leave the area enclosed by the guardrail while in possession of a ballot. RSA 659:15. Anyone who knowingly removes an official ballot to outside the guardrail before the close of the polls is guilty of a misdemeanor. RSA 659:38. No one other than election officials, voters casting their ballot(s), or a voter admitted by approval of the moderator to assist another voter can be admitted within the guardrail. RSA 659:21. Voters may not allow their marked ballot to be seen by any person with the intention of letting it be known how he or she is about to vote. RSA 659:35.

**ASSISTANCE IN VOTING.** A voter requesting assistance to mark his or her ballot may declare to the moderator under oath that he or she cannot read or is a person with disabilities who requires assistance with marking his or her

ballot. Generally, a voter should be allowed to choose who assists him or her in marking his or her ballot. RSA 659:20. 42 U.S.C. 1973 aa-6.

RSA 659:20 and federal law, 42 U.S.C. 1973 aa-6, allow the voter to choose who assists him or her, provided that person is not the voter's employer or union official.

**SPOILED BALLOTS.** A voter who spoils his or her ballot may receive another one, not to exceed 3 in all including the ballot originally issued, after returning the ballot to the moderator. The moderator must write "canceled" on the ballot and sign it. Any spoiled ballots are held by the moderator and sealed with other ballots when counting is over. RSA 659:22.

**DEPOSITING THE BALLOT.** The moderator receives the folded ballot from the voter. The moderator then places the ballot in the ballot box without looking at or allowing anyone to see how the ballot is marked. If the town/city uses ballot counting machines the voter should insert the ballot directly without the moderator handling the ballot. RSA 659:23.

The ballot should be handled in a manner that preserves the secrecy of the votes cast. If the town/city is using ballot counting machines, voters should be given a privacy folder to place the ballot in while carrying it from the voting booth to the ballot counting machine. If the ballot uses two sides, privacy folders are necessary. If the ballot is printed on only one side, privacy folders are strongly recommended. A privacy folder is a manila file folder that is wider than the ballot so that a voter can hold the edges of the folder while feeding the ballot into the counting machine. The ballot should be able to slide out of the folder into the machine. The privacy folder should be tall enough so that just a small section of the ballot, a tongue, sticks out. This prevents any one other than the voter from seeing how the ballot is marked, but provides a tongue that can be fed into the ballot counting machine.

## **OBSERVERS**

Anyone can come and watch the casting of ballots and the counting of ballots and see for himself or herself whether the election is conducted in accordance with the law.

These individuals can best be understood as observers. They have no special status in law and like all members of the public are entitled to silently observe the election as long as they are not disruptive.

At recent elections campaigns, political parties, and activist groups have sent a variety of individuals to observe the conduct of elections in New Hampshire. Some of these individuals were attorneys or other people who had received some training in the law of elections. These individuals should be accommodated as much as is practical without allowing them to disrupt the elections.

It is recommended that these individuals be addressed by the Moderator and told that they cannot interfere with voters or election officials. If the Observer has a question or concern, he or she should bring that concern to the Moderator, by silently or quietly signaling to the Moderator, who should as soon as is convenient meet with the Observer outside the rail.

The Attorney General's Office is available on election day to address concerns that these observers may have with election procedures. If a moderator is unable to easily resolve concerns raised by an Observer, or if an Observer insists that the law is not being followed, consider contacting the Attorney General's Office. The toll free line is staffed by attorneys during each State election day. 1-866-868-3703. These attorneys are prepared to review the law with the moderator or the observer and to resolve any concerns that the election law is not being complied with.

**CHALLENGES.** Any voter may challenge whether a person seeking to vote is entitled to do so. Providing that the challenge establishes a reasonable basis to doubt the voter's qualifications, a challenged voter's ballot shall be accepted by the moderator only if the voter signs

a challenged voter affidavit. RSA 659:27-33. Challenges to voters are discussed further starting at page 97.

**ABSENTEE BALLOTS.** The moderator shall receive absentee ballots from the clerk prior to the closing of the polls or time set for processing of absentee ballots. The moderator should sign a receipt for the ballots. RSA 659:46; RSA 659:49.

**ANNOUNCEMENT BY MODERATOR.** The moderator begins processing absentee ballots by announcing that he or she is about to open the envelopes. The moderator removes the affidavit envelope containing the ballot of each absentee voter and he or she compares the signature on the envelope and the application. If the name of the voter is on the checklist, the affidavit is properly executed, and the signatures match, the moderator then publicly announces the name of the absentee voter. RSA 659:50.

**CHALLENGES OF ABSENTEE VOTERS.** If the absentee ballot is challenged, the moderator shall write on the affidavit envelope containing the ballot the word "challenged," number the ballot and write the name and address of the person making the challenge and the basis of the challenge on the envelope or on a form for that purpose. If the moderator determines that the challenge is well grounded, the envelope is not opened and it is preserved unopened with other cast ballots. If the challenge is not well grounded, the envelope is opened and the reverse side of the ballot is numbered with the same number written on the envelope. The ballot is then processed in the same manner as an unchallenged absentee ballot. RSA 659:51.

**PROCESSING ABSENTEE BALLOTS.** The moderator opens the affidavit envelope containing the ballot (envelope is preserved), the ballot is removed (without unfolding it or examining it), a checkmark is placed beside the name of the absent voter on the checklist with the letters "AV" in red ink. The ballot is deposited in the ballot box or inserted into the ballot counting machine and the affidavit envelope is preserved with the cast ballots at the election. RSA 659:52.

**FORMS NOT IN ORDER.** If the moderator determines the absentee voter is not entitled to vote, the envelope is not opened and the reason the ballot is rejected is marked on the envelope and noted by the clerk in ElectionNet. (Activities – Elections – Absentee Ballots – Search – Select Voter – Absentee Ballot - Click "Update" button [at bottom of page] - Maintain Absentee Ballots. Identify the reasons the ballots was returned undeliverable, rejected, or challenged.) The moderator saves all unopened envelopes, which must be preserved after the election with the ballots that were cast and counted. RSA 659:53.

**IMMATERIAL DEFECTS.** The moderator can not reject an absentee ballot for any immaterial addition, omission or irregularity in the preparation or execution of any writing or affidavit required herein. RSA 659:54.

Moderators should exercise careful judgment when rejecting an absentee ballot because the signature of the voter on the affidavit does not appear to be signed by the same person who signed the absentee ballot application. The test is whether it is more likely than not that the same person signed both forms. It is a natural and common occurrence that a person's signature will change over time and will have differences even when the person writes out his or her signature several times, one immediately after another. A moderator deciding to reject an absentee ballot because the signatures do not match should be prepared to explain to the Attorney General's Office or a Superior Court judge what specific characteristics on the two signatures were the basis of the decision that they were more likely than not signed by different people. While signature verification is an important safeguard against voting fraud, as with all safeguards the analysis starts with a presumption of validity and the decision to disenfranchise a voter must be made only when there is sufficient evidence to justify that act.

**OUT OF BALLOTS.** The moderator should monitor the voter turnout and request the town or city clerk to prepare additional unofficial ballots if it appears that the supply of official ballots will be exhausted. RSA 659:24. Any

unused absentee ballots should be authenticated and used first. Next, photocopies of the official ballot should be used. These unofficial ballots must be authenticated by the signature or initials of the clerk or a designee prior to the ballots being issued to voters. This will distinguish these extra ballots from any that might be created and added to the official ballots fraudulently.

It is essential that the clerk and the moderator keep an accurate count of the number of absentee or photocopy ballots that are put into use. The total number of ballots used, that is issued to voters, must be reported to the Secretary of State. Furthermore, the total number of ballots used is an important number, because it can be used by the moderator to compare with the total votes and abstentions cast for particular offices or questions when reconciling the ballot count.

Only authentication marks can be made on these ballots. Otherwise, it is a misdemeanor for any election officer to place a mark on any ballot, except when marking a ballot at the direction of a voter with disabilities, marking a spoiled ballot or marking a challenged ballot. RSA 659:36.

The moderator should make their best effort to prevent the use of unofficial ballots from inadvertently compromising the secrecy of how the last few voters marked their ballots. For example if only one unofficial ballot is used and the people who will be counting know who the last voter was, identifying the unofficial ballot would make it possible to tell how that person voted. When the ballots are examined during hand counting it should not be possible to tell how any voter voted by knowing who used the unofficial ballot. As a general rule, try to have no less than ten voters use unofficial ballots, even if doing so means a few official ballots are not used prior to starting to use unofficial ballots.

## **VOTING DURING EXTENDED HOURS**

The Help America Vote Act of 2002 requires most states to adopt provisional voting, a system whereby anyone whose right to vote is in doubt is allowed to cast a marked ballot. New Hampshire, like other states that allow election day registration, is exempt from the requirement for provisional voting in all areas but one. With provisional voting, most disputes over whether a voter should be allowed to vote are resolved after the elections. If it is determined the voter should not have voted, the mark on the ballot is used to allow officials to determine how he or she voted and to remove his or her vote from the results. In New Hampshire the dispute over whether a voter should be allowed to vote is resolved at the polls on election day and if found qualified the voter casts an unmarked election day ballot.

If a court order requires that polls be kept open past the scheduled time for closing the polls, New Hampshire is required to have a means to mark those ballots that are cast during these extended hours of voting. In other states, when election officials have been unable to open the polls on time or the polls are not adequately equipped to allow those who show up to vote, courts have ordered the polls be kept open for several more hours. This has never happened in New Hampshire.

RSA 659:26-a provides that if the polls are ordered to be kept open for extended hours, the moderator shall cause the ballots cast during those extended hours to be marked with the letters "EH." The ballots should be marked before they are given to voters. The position of the mark should not interfere with the marking or counting of the ballots and should be uniform on each ballot. If the ballots have offices or questions on only one side, the mark should be put on the opposite side.

These "EH" ballots should be cast and counted in the usual manner, but should be separated and held apart from the other ballots when stored. In the unlikely event extended hours are ordered, but a court later determines that people should not have been allowed to vote during extended hours, a court can order these ballots retrieved from storage, counted, and the votes cast

removed from the totals for that election. RSA 659:26-a.

**CLOSING THE POLLS.** The moderator shall close the polls at the hour stated in the warrant or notice, unless the hours have been extended. Anyone waiting in line when the closing of the polls is announced must be allowed to register if necessary and to vote. The moderator should oversee the determination of who is at the end of the line, if one exists. Common sense and an approach that treats everyone equally should be applied in allowing a voter crossing the room or parking lot to join the line at the moment when the poll is declared closed to be treated as being in line.

The public has a right to observe both voting and counting of ballots. Therefore, it is inappropriate to lock the doors to the polling place as a means of notifying those people who arrived after the polls have been officially closed that they can not join the line of those who were at the polls before closing and are waiting to register and vote. Moderators should plan to have election officers or law enforcement officers available to prevent late arrivals from joining the line of those waiting to vote after the official hour for closing the polls has passed.

**RETURN OF MATERIALS FROM ADDITIONAL POLLING PLACE.** If the moderator does not order that the ballots be counted at the additional polling place as provided in RSA 659:59, the assistant moderator at the closing of the polls shall seal the ballot box. The sealing will be done in the presence of the inspectors of the election and certified by the assistant town clerk at such polling place.

**CERTIFICATION OF CHECKLIST.** After closing the polls at a state election, the moderator and town or ward clerk shall certify on the checklist that it is the one used by them at said election and that the list of legal voters is correct and complete. RSA 659:56.

**COUNTING OF VOTES.** The moderator shall oversee the counting of votes by other election officers, including the selectmen and town clerk, and may discharge any other duties relating to the

counting of votes. The moderator sets up the voting area for the counting process. Each moderator should devise a system for counting ballots which will expedite the process. RSA 659:60. If absentee ballot processing was not previously completed, all absentee ballots must be processed before ballot counting starts. RSA 659:61.

The moderator may select volunteers to assist election officers in counting ballots. These volunteers must be voters in the town or ward or 17-year-olds who would be qualified as a voter were they 18-year-olds. RSA 658:7 gives the moderator authority to appoint such election officials as he or she deems necessary. Swear in these non-election official volunteers as election officials (inspectors of election pro tempore). As election officials the volunteer ballot counters are swearing or affirming that they will perform their duties lawfully and they become subject to criminal prosecution for official misconduct pursuant to RSA 666:3

Errors occasionally occur during the calculation of votes totals. Sometimes errors are made when votes from different counting tables are added together or when totals of hand counted ballots are added to totals of machine counted ballot. Counting is often completed by election officers who have been on duty for 10-12 hours prior to the start of counting. Adding checks and balances to the counting process will require additional time and/or personnel, but it will be easier and cheaper than conducting a recount. The legitimacy of the election process and the public trust in elections is negatively affected when recounts reveal counting or totaling errors. Moderators are encouraged to consider using one or more techniques for avoiding counting and tabulation errors which are currently used in various towns and cities. See model instructions for tabulating results starting at page 110.

To minimize the chance of inadvertent mistakes, moderators are encouraged to use the services of bookkeepers, accountants, math teachers or others who work daily with numbers to reconcile the results on election night. Ideally a person with these skills who does not otherwise work the

polls or participate in the counting would join the process at the end. This person should compare the results of each contested race and question with the total number of ballots used and the total number of voters checked off as voting.

Ideally the total of the votes for all candidates and write-ins, plus the total number of abstentions should equal the number of ballots used and voters voting. Your results are conspicuously invalid if the number of votes cast for candidates or the total number of yes plus no votes for a question is greater than the total number of ballots used or the total number of voters checked off as voting. A few extra minutes of checking on election night can easily identify a tallying mistake and avoid both a loss of public confidence in the ballot counting process and the time and expense of a recount.

**DECLARING THE RESULTS.** The moderator must publicly declare the results of the election. Each write-in vote, even votes for fictitious or historical figures should be announced in some manner. Some voters will test the ballot counting process by writing in a name they believe no one else would write in, and then check to see if that vote was counted. Posting a copy of the worksheet where scattered write-in votes were documented is sufficient if the number of write-ins with few votes are too many to orally announce.

If a town or ward comprises an entire Representative district, the moderator shall declare the state Representative(s)-elect. RSA 659:82. Multi-ward or multi-town districts are declared by the Secretary of State.

Across the United States one area of election administration that is subject to public scrutiny and criticism is the process by which numbers are transmitted from the polling place officials to the state officials who determine the official results of regional and statewide contests. One way to reassure suspicious voters is to make the results from each polling place easily accessible at the polling place and locally, so that the voters can compare what you say the results are with the numbers used by the Secretary of State to determine the winner of the regional and statewide races. Therefore, it is recommended that the

Moderator post a copy of the written results at the polling place on election night and that the clerk keep them available at the clerk's office following the election.

**SEALING AND CERTIFYING BALLOTS.** Ballots must be sealed immediately after the votes at a state election have been tabulated, the results have been announced, and the return prepared. The moderator or his or her designee, in the presence of the selectmen or their designee, shall place the:

- Cast ballots;
- Canceled ballots;
- Uncast ballots;
- Ballots from any additional polling places; and
- Successfully challenged absentee ballots

in containers supplied by the Secretary of State. RSA 659:97. The container shall be sealed in public by the moderator with the sealer provided by the Secretary of State. RSA 659:97. The moderator or his or her designee shall enter the following information on the sealer in the appropriate place: the number of ballots cast, canceled and uncast, and endorse the sealer. RSA 659:95.

**Moderators and clerks are strongly urged not to seal the tally sheets into the ballot box, as these may be necessary to resolve tabulation questions following election night. Since the ballot box cannot be accessed without a recount or court order, sealing your election night tally sheets and working papers in the box of ballots prevents a review of the count of votes.** Apparent errors in the Return of Votes discovered by the Secretary of State on the Wednesday following the election can often be quickly resolved with a high degree of confidence if the moderator and clerk can review their tally sheets and working papers used to reach the numbers reported on the Return of Votes.

**DELIVERY OF BALLOTS TO TOWN CLERK.** The moderator, or his or her designee, and the selectmen, or their designee, having publicly sealed and certified the state election

ballots shall deliver the sealed containers to the town or city clerk, or his or her designee. The clerk shall, in their presence, enter the time and his or her signature on the sealer. RSA 659:98.

### **REPORTING OF WRONGFUL VOTING.**

The moderator has the responsibility to report any violations of RSA 659:34 through RSA 659:49 to the Attorney General's Office. RSA 659:45. Phone calls should be placed to 1-866-868-3703 (toll free). A written statement or report will usually be requested and the report should be mailed to Office of the Attorney General, 33 Capitol Street, Concord, New Hampshire 03301-6397. At State elections the Attorney General's Office generally has several attorneys and investigators working around the State who are available to respond on short notice to a polling place. It is often much easier to address concerns with voting procedures or questions about a voter's qualifications on election day while the polls are open, than to address the issue after election day.

### **OPTIONAL COUNTING OF VOTES AT ADDITIONAL POLLING PLACE.**

The moderator may, in writing, order the assistant moderator to process absentee ballots and to count votes cast at the additional polling place in the presence of and with the assistance of the assistant town clerk and election officers assigned to that polling place, in the same manner as at the central polling place. After absentee ballots are processed and counting is complete, the assistant moderator shall place the:

- Counted ballots;
- Duplicate checklists used at the additional polling place;
- Absentee envelopes;
- Spoiled ballots; and
- Unused ballots

in the ballot box and shall seal it, and the assistant town clerk shall certify the same. The assistant moderator with the assistant town clerk shall immediately deliver the ballot box with its contents and a written report of the count signed by both to the moderator at the central polling place. RSA 659:59.

Polling places that use ballot counting machines (optical scanners) should be directed by the elected moderator to produce the tape reporting the totals cast at that polling place and then "end" the machine before moving the machine, ballots, and the tape to the central polling place. The results at the additional polling places should be reported. The sealing and transportation should be done by more than one election officer. At partisan elections, at least one election officer affiliated with each party should be allowed to witness the sealing and transportation.

At the central polling place, the elected moderator will oversee tallying of the votes from all polling places and will announce the results.

## **POST-ELECTION DAY**

**RECOUNT (TOWN ELECTION).** The moderator along with the town clerk and board of selectmen constitute the board of recount and shall recount the ballots. If one of the board of recount is a candidate for the office being recounted, the moderator shall appoint an assistant to serve in the same capacity. RSA 669:32. The statute does not explicitly authorize the moderator to appoint other election officers to assist the board of recount, however, it is common practice for moderators to do so.

**RECOUNT (SCHOOL ELECTION).** The board of recount in a school district election is made up of the school district clerk, the school district moderator, and the members of the school board. RSA 671:32, II. As with town recounts it is common for the moderator to appoint election officials to assist the board of recount.

**RECOUNT PROCEDURES.** The process to be used in conducting the recount is left to the discretion of the Board of Recount. The Secretary of State has adopted rules of procedure for recounts. Boards of recount may wish to consider adopting those rules as shown on pages 154 and 159.

**Advance written notice to candidates.** Every candidate for the office(s) that is going to be recounted and each of the persons who have requested the recount of a question shall be sent a written notice.

The clerk, ideally in coordination with the board of recount, sets the date, time, and location for the recount.

The notice should include a written description of the process the board of recount plans to use to conduct the recount. If the process is going to involve the use of more than one team of officials counting, the notice should state the maximum number of teams anticipated. It should advise that the candidates or persons requesting the recount must have a sufficient number of assistant observers present to observe each counting team. If they fail to have an observer for each team, they waive the opportunity to do so. The notice should state that each observer will be afforded an opportunity to see, but not handle, each ballot. That will be the one opportunity the observer will have to protest how that ballot is being counted. If the observer wishes to protest how the recount team is counting a particular ballot he or she needs to do so at the moment in time when that ballot is being counted by the team.

Some system should be adopted to identify each ballot that any observer protests. Typically these ballots are segregated into a separate pile at each counting location.

At some point, typically after all ballots have been examined and counted by the team(s), but before the team tallies are totaled, all the protested ballots should be ruled on by the board of recount. By ruling on protested ballots before the team tallies are totaled the decision on each protested ballot is made before it is known whether the decision will affect the outcome of the election. This reinforces the neutrality of the counting process.

The intent of the voter for each protested ballot is determined by a majority vote of the members of the board of recount. RSA 659:64. If the majority of the board of recount determines that a ballot should be counted as a vote for a particular

candidate, that vote, even if the ballot is further protested, must be added to that candidate's total votes.

The candidates or the persons requesting the recount of a question must then be given an opportunity to protest the decision of the board of recount. When the board's decision is protested, the board of recount should adopt some system to document how it ruled on each ballot. Even though the ballot will be marked, the vote from that ballot as determined by the board of recount must be included in the total of votes credited to the candidate. Typically only the ballots protested as this second step will be examined by a court hearing an appeal of the recount. The system used to document the board's decision and to identify the ballot as a protested ballot should not add marks to the ballot or alter the ballot in any way that might affect the ability of a court on appeal to examine the marks made on the ballot by the voter.

One approach is to staple a sequentially numbered piece of paper to each protested ballot, writing on the paper the board's decision. Write on the paper either the name of the candidate(s) who is credited with a vote from the ballot or the word "yes" if the ballot is to be credited as a yes vote on a question or the word "no" if the ballot is to be credited as a no vote on a question.

Appeals from decisions made by a board of recount typically should be limited to disputing the Board's decision on how particular ballots were counted. Protested ballots should be preserved with the other ballots from the election, but segregated so that the clerk can produce specific protested ballots for review by the court hearing the appeal.

## RULES OF ORDER

Moderators control election and meeting day activities. Some moderators find it helpful to



adopt rules of order. Established systems of rules such as Robert's Rules of Order generally are too complex and afford too much opportunity for individuals with extensive knowledge of the rules to gain unfair advantage. A simple set of rules may be more helpful. Some moderators announce the rules and post them at the meeting place. The rules should always include notice to the voters that they may by motion seek to overturn decisions made by the moderator. Voters who believe the moderator has made a procedural error, is cutting off debate prematurely, or has made a mistake in declaring a result should have notice that they need to immediately put the moderator on notice through a motion to overrule the moderator or in the case of the declaration of a vote, a motion for a paper ballot vote. When complaints of procedural errors by a moderator are reviewed by the Attorney General's Office, additional deference to the moderator is shown when the record of the meeting establishes that the complaining party had notice of his or her right to move to overrule the moderator or for a paper ballot vote on a question.

## IX. SUPERVISOR OF THE CHECKLIST DUTIES

The term “supervisors of the checklist” shall include any board of registrars or similar body performing the functions of registering voters and correcting the checklist in cities. RSA 652:15.

### VOTER REGISTRATION FORM

RSA 654:7, amended in 2003, sets forth a voter registration form. The form combines the voter registration form, the same day registration form, and includes a section explaining domicile and some responsibilities that accompany establishing domicile in New Hampshire.

To accommodate this new information the form was enlarged to 8<sup>1/2</sup> by 11 inches. The implementation of ElectionNet as required by the federal Help America Vote Act of 2002 (“HAVA”) has eliminated the need for duplicate copies of the form. Currently a copy of the form needs to be made only when the new voter was most recently previously registered in another New England state. ElectionNet currently will notify the New Hampshire municipality where the voter was previously registered, so there is no need to send a copy of the form to New Hampshire municipalities. Similarly the clerk is an authorized ElectionNet user in each municipality, therefore, there is no need to provide the clerk with a copy of the paper registration form. Clerks generally can look up voter information when needed by using ElectionNet, or if the clerk prefers a written record, one can be printed from ElectionNet.

The voter registration form is on page 166.

### STANDARD OF PROOF

The supervisors of the checklist determine whether an applicant is qualified to register to vote. The supervisors of the checklist act in a quasi-judicial capacity and are obliged by law to act impartially

based on the evidence before them and facts known to them. The decisions made by the supervisors of the checklist are subject to review by the Superior courts.

It is important that any decision to reject an applicant be appropriately documented and that the rejected applicant receive proper notice of the decision.

RSA 654:11, amended in 2003, changes the standard of proof or test to be used by the supervisors when deciding if an applicant is qualified to vote. The standard of proof now reflects the standard of proof that will be applied by the courts if the supervisors’ decision is appealed.

If there is contradictory evidence or questionably sufficient evidence before the supervisors regarding any particular candidate’s identity, age, citizenship or domicile qualifications, RSA 654:11 creates a presumption that the applicant is qualified to vote and authorizes the supervisors of the checklist to reject the application only if they conclude that it is more likely than not that the applicant is not qualified.

Stated in other terms, if the evidence that the person is not who he or she claims to be, will not be age 18 on election day, is not a United States citizen, or is not domiciled in the town or city ward where he or she seeks to register is of greater weight than the evidence that he or she is qualified, then it is proper to deny the application.

This standard is also sometimes referred to as a preponderance of the evidence. Stated a third way, supervisors should reject an application if the evidence as a whole shows that it is more probable than not that the applicant is not who he or she claims to be, will not be 18 on election day, is not a United States citizen, or is not domiciled in the town or city ward where he or she seeks to register and vote. Decisions must be made by a majority vote of the supervisors.

***Application to Supervisors. When the supervisors of the checklist receive a***

*registration form from the town or city clerk or when an applicant submits the form to said Board of Supervisors in person at a session for the correction of the checklist, the Board of Supervisors of the checklist shall cause his or her name to be added to the checklist, unless it is established that it is more likely than not that the applicant is not qualified to vote in the city or town under RSA 654:1 through RSA 654:6. All decisions of the Board of Supervisors of the checklist shall be made by majority vote thereof.”*

RSA 654:11

## PROOF OF IDENTITY

The Legislature in 2006 added a provision that makes explicit that an applicant for registration as a voter must prove his or her identity during the application process. RSA 654:12, III. While it was generally understood under the prior law that the requirement to prove age, citizenship, and domicile implicitly also required the applicant to prove his or her identity, this new provision defines the process and requirements of proving identity.

A person who has in his or her immediate possession a New Hampshire driver's license, Armed Services identification, other photo identification issued by the United States government, a photo driver's license issued by any state or the federal government, a United States passport, or photo identification issued by local or state government must present that identification. If the person owns such a document, but does not have it in his or her immediate possession he or she is entitled to prove his or her identity by any of the following means, generally in the order in which they are presented.

This means that, if going out to the car is a quicker alternative to any of the following alternatives, a person may be asked to go out to their car at the clerk's office or polling place to retrieve one of these forms of proof of identification, but an election official cannot require a person who can prove his or her identity by other means to drive

home or elsewhere to retrieve one of these documents.

A person who does not have an approved photo identification with him or her may establish identity through any reasonable means, including but not limited to:

- Other forms of photo identification judged to be legitimate and trustworthy by the Supervisors, such as ID badges issued by hospitals, employers, or educational institutions;
- Verification of the person's identity by another person registered as a voter and known to the supervisor or clerk;
- Other reasonable means as determined by the Supervisors.

This last provision continues the longstanding law that provides supervisors and clerks with the authority to apply good New Hampshire common sense in determining, often using local knowledge, what is good enough to establish that it is more likely than not that the applicant is the person he or she claims to be. As is common practice throughout the state a quick and friendly conversation about local events or landmarks that would be known by anyone living where the applicant claims to live will resolve any doubt about whether the offered proof should satisfy the supervisor or clerk.

As a last resort, a person may prove identity by completing the affidavit required of a challenged voter. RSA 654:12, III.

## NURSING HOME RESIDENTS

Residents of a nursing home or similar facility who no longer possess the usual forms of identification, may prove their identity through verification by the administrator of the facility or his or her designee. If an applicant for voter registration proves his or her identity by having it verified by a nursing home administrator, that registration will be treated in the same manner as would a registration where the applicant proved his or her identity with a qualified photo identification. RSA 654:12

## DOMICILE

The New Hampshire and United States constitutions establish that every person who is not disqualified from voting has a right to vote somewhere. A person can be disqualified due to being under age, being a convicted felon who is currently incarcerated for that conviction, being a person who has been convicted of a willful election law violation, or not being a citizen of the United States. Otherwise, the person has a right to vote somewhere, domicile analysis should be about where the person votes, not if the person votes.

A major responsibility faced by local election officers is conducting elections in a manner that encourages voting – making the process quick, easy, and fair to all – while at the same time ensuring that the outcome of elections are not illegally influenced by unqualified persons voting.

Procedures that make voting easy inherently also make voting fraud easier. Procedures that detect and deter voting fraud by their nature make it more complex and time consuming to register and vote. Local election officials must strive to attain the proper balance between these competing interests.

The determination of whether a person is domiciled in the town or ward where he or she seeks to vote is a challenging but critical part of conducting lawful, fair elections that encourage voting.

In 2003, the Legislature amended the law on domicile for voting purposes. These changes were made as a result of a report by a legislative study committee that took substantial testimony from local election officials. The law on domicile as amended provides:

### *RSA 654:1 Voter; Office Holder.*

*I. Every inhabitant of the state, having a single established domicile for voting purposes, being a citizen of the United States, of the age provided for in Article 11 of Part First of the Constitution of New Hampshire, shall have a right at any meeting or election,*

*to vote in the town, ward, or unincorporated place in which he or she is domiciled. An inhabitant's domicile for voting purposes is that one place where a person, more than any other place, has established a physical presence and manifests an intent to maintain a single continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. A person has the right to change domicile at any time, however a mere intention to change domicile in the future does not, of itself, terminate an established domicile before the person actually moves.*

*II. Any elected or appointed official for whom one of the qualifications for his or her position is eligibility to be a voter in the area represented or served shall be considered to have resigned if the official moves his or her domicile so that he or she can no longer qualify to be a voter in the area represented or served. Any vacancy so created shall be filled as prescribed by law.*

*RSA 654:2 Temporary Absence. A domicile for voting purposes acquired by any person in any town shall not be interrupted or lost by a temporary absence therefrom with the intention of returning thereto as his or her domicile. Domicile for the purpose of voting as defined in RSA 654:1, once existing, continues to exist until another such domicile is gained. Domicile for purposes of voting is a question of fact and intention. A voter can have only one domicile for these purposes. No person shall be deemed to have lost a domicile by reason of his or her presence or absence while employed in the service of the United States; nor while engaged in the navigation of the waters of the United States or of the high seas; nor while a teacher in or student of any seminary of learning; nor while confined in any public prison or other penal institution; nor while a patient or confined for any reason in any nursing, convalescent home or hospital, old folks or old age home, or like institution or private facility.*

Prior to September 1, 2003, the effective date of this new law, the two part test for domicile was:

1. Physical presence – the individual had to have and to prove to the satisfaction of the supervisors of the checklist or the clerk acting on their behalf that the applicant maintained a physical presence in the jurisdiction (or had) such that it was the one place more than any other place where he or she actually lived. This part of the test of domicile remains essentially unchanged.

2. Intent to indefinitely reside - the statute used to require that the individual assert a subjective intent to be domiciled for voting purposes at the place claimed as his or her voting domicile. This was a test of his or her state of mind. Court decisions limited the state's ability to require an indefinite intention, allowing, in effect, only a requirement that the person say he or she intended to live at the place he or she claimed as domicile on voting day. This part of the test of domicile has been changed.

Under the new law the requirement for physical presence remains very similar. A person can only have one domicile for voting purposes and it is the one place, more than any other, where the individual has established a physical presence.

The second prong of the test for domicile is different under the new law. It looks not to what the person reports he or she is thinking about where he or she wants his or her domicile to be, but to manifestations – physical acts or conditions clearly visible to sight – of his or her intentions.

Under the new law the supervisors are to look at the applicant's manifestations of intent to maintain a single, continuous presence for domestic, social, and civil purposes relevant to participating in democratic self-government. Manifestations of such intent may include:

- Where the person owns or rents property in which he or she sleeps more than any other place during the year;
- Where he or she conducts other business with government;
- Where he or she sends children to school;

- Where he or she registers motor vehicles;
- Where he or she registers a dog;
- The location he or she lists as a residence on a driver's license and/or vehicle registration,
- Where he or she tells the United States Postal Service to deliver mail that must be signed for in person;
- Where he or she keeps most personal property, etc.

It is **not mandatory** that a person prove any one or more of these manifestations of domicile in a particular town or ward to be qualified to vote there. Each, however, is evidence of where a person's domicile is located.

To provide guidance for the determination of domicile and to make the process of registering to vote easy and quick for most applicants, the law establishes certain documents as **presumptive** proof of being qualified as a voter.

*RSA 654:12 Determining Qualifications of Applicant.*

...

*II. The Board of Supervisors may refuse to add the name of an applicant to the checklist if he or she fails to present the evidence or an affidavit as required by this section. Without limiting the acceptance of other forms of proof of domicile or identity deemed reasonable by the Board of Supervisors:*

*(a) Any one of the following documents is presumptive evidence that the individual seeking to vote meets the domicile requirement, provided the document is currently valid, was issued to or in the name of the applicant, and shows the address the applicant claims as a domicile:*

*(1) New Hampshire driver's license.*

*(2) New Hampshire vehicle registration.*

*(3) Armed services identification, or other photo identification issued by the United States government*

These documents are presumptive only. The ultimate decision to accept or reject the application lies with the supervisors of the checklist or in cities with the registrars. (References to the supervisors apply equally to registrars who serve the same role in the cities.) Provided the supervisors possess evidence that, in their judgment, makes it more likely than not that the applicant is not domiciled where shown on one of these presumptive documents, the supervisors may vote to reject the applicant. It is expected, however, that most applicants will possess one of these documents and will be able to register quickly and conveniently.

The law requires that the supervisors of the checklist, or the clerk acting as their agent, **shall** require the applicant to present proof of identity, citizenship, age, and domicile. However, the law continues to give the supervisors broad discretion as to what, in addition to the presumptive documents, they choose to accept. The supervisors may accept, and by inference may not reject, any reasonable documentation.

***RSA 654:12 Determining Qualifications of Applicant.***

***I. When determining the qualifications of an applicant, the Board of Supervisors of the checklist, or the town or city clerk, shall require the applicant to present proof of citizenship, age, and domicile, as provided in the following categories:***

In the event an applicant cannot produce the proof necessary to qualify as a voter, the law also sets forth the forms of an affidavit that the person can use in lieu of other proof of his or her identity, domicile, or citizenship. See samples of the affidavits starting at page 131.

In an effort to deter voting fraud and to make prosecution of voting fraud more feasible, the affidavits explicitly require the applicant to swear or affirm the truth of his or her written statements in front of an election officer. To swear out an affidavit, the applicant must either be known to the

person taking his or her oath or must prove his or her identity to the person taking the oath.

**Proof of identity for the purpose of swearing an affidavit.** RSA 654:12, II (b) establishes a list of documents which are presumptive proof of identity. These documents need not be currently valid, may show an address in another town/city or even state, but are adequate to establish identity for the purposes of swearing or affirming an affidavit.

***RSA 654:12 Determining Qualifications of Applicant.***

...

***(b) Any one of the following is presumptive evidence of the identity of an applicant sufficient to satisfy the identity requirement for an official authorized by RSA 659:30 to take the oath of an applicant swearing to a citizenship, domicile, or election day affidavit:***

***(1) Photo driver's license issued by any state or the federal government.***

***(2) United States passport, armed services identification, or other photo identification issued by the United States government.***

***(3) Photo identification issued by local or state government.***

As was the case with the documents established as presumptive proof of domicile, these documents can be rejected as proof of identity if the election official has evidence that contradicts them. It is necessary that the contradictory evidence make it more likely than not that the person is not who he or she claims to be.

Also, as was the case with proof of domicile, election officers, may accept any other form of proof of identity that they deem reasonable.

The purpose of the statute is to require an applicant who arrives to register to vote without proof of his or her qualifications to register and vote provided he or she can establish his or her identity and is willing to sign an affidavit(s) under penalty of law.

The process is made more formal in order to ensure the applicant understands the importance

of the process and to provide a record of who took the oath to aid in prosecution should it later be established that the affidavit was not true.

The affidavit forms each require the affiant, the applicant, to swear to an election official, notary or justice of the peace who must then himself or herself sign the form attesting to having taken the oath. See Domicile Affidavit at page 132.

#### **APPLICANT MAY SWEAR OATH BEFORE ANY ELECTION OFFICER.**

RSA 659:30 provides that all election officers are authorized to take an oath from an applicant for registration. This means that should the process of taking oaths become a logjam in the voter registration process the Moderator may appoint assistant moderators and/or enlist selectmen who can then take oaths. Until 2006, this statute also authorized notary publics and justices of the peace to take oaths for election registration documents. That authority was removed from the law, now an election official must take the oath or affirmation.

**APPLICANTS MUST PROVIDE PROOF OF QUALIFICATIONS.** RSA 654:12 requires all applicants to provide proof of their qualifications as voters to the supervisors or the clerk.

#### **Determining Qualifications of Applicant.**

When determining the qualifications of an applicant, the supervisors of the checklist, or the town or city clerk, shall require the applicant to present proof of citizenship, age, and domicile.

Any person whose name is not on the checklist but who is otherwise a qualified voter shall be entitled to vote by requesting to be registered to vote at the polling place on election day. The voter may then vote at that election. The applicant shall be required to produce appropriate proof of qualifications as provided in RSA 654:12.

While it will be mandatory that some proof of qualifications be produced, the Legislature has not altered the grant of discretion to the supervisors, and the clerks acting in accordance with the

supervisor's guidelines, to determine what constitutes adequate proof. Each section of RSA 654:12 still includes the phrase or other "reasonable documentation." Furthermore, the state and federal constitutions still require that anyone not disqualified as a voter (under age, incarcerated felon, etc.) must be allowed to vote somewhere. Inherent in this requirement is that an individual whose lifestyle does not allow or anyone who chooses not to have a driver's license, not to register a vehicle, not to purchase utility services, etc., must have some method available by which to prove his or her domicile.

The statutes, when viewed in light of the state and federal constitutions, have always placed a very important responsibility on local election officials to determine who is qualified to vote while simultaneously acting reasonably to prevent election fraud. Both HAVA and RSA 654:12 address the local election official's responsibility to require the average individual seeking to register to vote to produce proof of his or her qualifications and proof of his or her identity in order to use an affidavit to prove citizenship or domicile. Applicants who can not satisfy one of these two easy methods for proving his or her qualifications as voters, however, must still be offered the opportunity to make some alternative proof.

The statute that establishes the requirement that a person must be domiciled in the state to hold elected office provides that "Registration to vote or voting in another state during the relevant time period shall create a presumption that a person does not have a domicile in this state." RSA 655:2. This provision does not prevent a person from moving to a New Hampshire town or ward and voting on the same day he or she moves into the new town or ward. New Hampshire does not impose a requirement that a person have lived at his or her new domicile for any period of time before being eligible to register and vote.

## INCARCERATED FELONS

A person sentenced for a felony, from the time of his sentence until his final discharge, may not vote unless the sentence is suspended or the individual is paroled. An individual sentenced for a felony forfeits any office held at the time of sentencing and may not become a candidate for or hold public office until the sentence is finally discharged. RSA 607-A:2; RSA 654:5.

People confined in a penal institution in pre-trial detention or as a result of a conviction for a misdemeanor retain the right to vote. Their domicile for voting purposes is the town or city where they had their domicile immediately prior to being confined. Persons confined in a penal institution must vote by absentee ballot. RSA 654:2-a.

Any person convicted of bribery or intimidation relating to elections or any willful violation of the election law is forever disqualified from voting, seeking or holding public office. New Hampshire Constitution, Part 1, Article 11; RSA 654:6. The right to vote can be reinstated by the Supreme Court.

## ABSENTEE REGISTRATION

Any person who is qualified to register to vote, but who is unable to register in person in advance of the election may register to vote absentee, through the mail. RSA 654:16; RSA 654:17. Applicants are required to send copies of the documents that they rely on as proof of their qualifications as a voter.

### *RSA 654:17 Absentee Registration Affidavit*

...

*4) That I hereby enclose one of the following as proof of identity and domicile:*

*(a) A copy of a current and valid New Hampshire driver's license or an armed services identification or other photo identification issued by the United States*

*government that shows the name and address of the voter; or*

*(b) A copy of a current and valid photo identification and a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter;*

*5) That I acknowledge that if I do not provide a copy of proof of identity and domicile as required by section 4) above, this application may not be approved; . . .*

## MILITARY AND OVERSEAS CITIZENS

Any United States citizen who is domiciled outside the United States, who is otherwise qualified to vote, has a right to register absentee and vote absentee in any federal election in the town or city in New Hampshire in which he or she had his or her domicile immediately prior to departing the United States. RSA 654:3. Armed services voters who are absent may vote in any federal or state election. RSA 654:4.

Armed Services Voters include members of all the military branches, the Merchant Marine, civilian employees of the United States government, including the peace corps, serving outside the United States, members of religious groups attached to and serving with the armed forces, and the spouses or dependents of any of the above. RSA 654:4, II.

HAVA requires and RSA 657:19 establishes in New Hampshire that when a UOCAVA (absentee armed services or overseas citizen) voter specifically asks, his or her request for an absentee ballot must be honored for each subsequent election that involves federal offices through the next 2 regularly scheduled general elections.

This means that the request must be honored for the upcoming election and must be kept on file



and honored for the following federal/state general election two years later. Stated in other words, a valid request submitted in 2006 asking for an absentee ballot for the 2006 September primary election, if the applicant asks, must be honored not only for the primary and general elections in 2006, but must also be kept on file and honored for the presidential primary and primary and general elections in 2008.

NOTE: This requirement applies only when the person asking for an absentee ballot also asks that the request be honored for future elections.

## **ABSENTEE BALLOT REQUEST – PERSON NOT REGISTERED**

In response to requests from clerks, RSA 657:16 was amended in 2003 to change what a clerk should do upon receipt of a request for an absentee ballot from a person who is not registered. A clerk is now authorized by law to send the unregistered person a ballot, a written notice of what he or she needs to do to get registered and the forms necessary for the applicant to get registered. **The instructions should clearly indicate that the voter registration form and any supporting documents should be put in the outer envelope, not in the affidavit envelope,** when returned to the clerk. The clerk needs to mark the absentee ballot affidavit envelope with the words “Not Registered” to ensure that if the person returns the envelope, that on election day, a determination is made whether the person has submitted the documents necessary to become registered as a voter.

At the polls on election day, if an outer envelope is returned without the forms and documents necessary to complete the voter’s registration, the inner affidavit envelope should be opened to determine if it contains the documents necessary for registration. The ballot should not be removed from the envelope and should remain folded. If the envelope does not contain the missing registration forms or documents, the envelope should be immediately sealed with staples or tape, with the unexamined ballot still inside. The envelope is then treated in the same manner as the

unopened envelope of a successfully challenged absentee voter.

## **PRE - ELECTION DAY**

**CHECKLIST DECISIONS MADE BY SUPERVISORS OF THE CHECKLIST.** It is up to the supervisors of the checklist to make the final determination of whether to add the applicant's name to the checklist. RSA 654:11. The Board of Supervisors should consider any applications received at their next meeting.

If they vote by majority that the applicant is qualified, they should add his or her name to the checklist. RSA 654:11 - 13.

If the applicant is deemed not to be a legal voter, the supervisors must inform him or her in writing within 7 days of their decision, stating the reason for denial. RSA 654:13. If the person’s name has been entered in ElectionNet as pending, supervisors should mark the voter record as rejected in ElectionNet. Any citizen may appeal the denial of his or her application to the Superior Court. RSA 654:42.

**DISTRIBUTION OF REGISTRATION FORMS.** Entering the registration in ElectionNet will currently satisfy the requirement that the clerk and the New Hampshire municipality where the voter was last registered be notified of the registration. If the applicant was previously registered in any Vermont, Maine, Massachusetts, Connecticut, or Rhode Island jurisdiction, a copy of the registration form shall be forwarded to the supervisors for the jurisdiction where the person was last registered. It is expected that in the future the Secretaries of State will establish a system where ElectionNet will notify out-of-state authorities automatically. However, until that system is operating supervisors still need to mail copies to officials in the other New England states. RSA 654:13.

**INFORMATION TO CLERK.** The Supervisors of the Checklist shall furnish the town or city clerk, upon his or her request, the information the clerk needs to determine the

proper ballot to be sent to an absentee voter. RSA 657:14.

**ABSENTEE VOTER REGISTRATION.** A person desiring to register to vote who is temporarily absent or is a person with a disability may register using a special Absentee Voter Registration Form. RSA 654:16.

**CHECKLIST STANDARDS.** Information required to be maintained by the supervisors includes: completed registration form and checklists in alphabetical order, both of which are updated after each election. RSA 654:25.

## **TIMELY ENTRY OF NEW VOTERS, REMOVALS AND CHANGES**

To avoid confusion, supervisors of the checklist are responsible to ensure that new voters are entered into ElectionNet (SVRS) in a timely manner, and to approve pending removals and pending approvals before providing copies of the checklist to the public.

**CHECKLIST CHANGES; REMOVAL OF NAMES.** The supervisors should remove the name of any person who relinquished his or her U.S. citizenship or domicile in the community.

A domicile for voting purposes, however, is not lost because a voter is temporarily absent from his or her home. RSA 654:2. Prior to removing a voter from the checklist, the supervisors must send written notice by mail at least 30 days in advance. RSA 654:44. See model notice of removal letter at page 163, and in ElectionNet (SVRS).

Upon receipt of a report of transfer from another community or state, reporting that a voter has registered in another community, the supervisors should remove that name from the checklist. RSA 654:36; RSA 654:37; RSA 654:44. For in-state transfers, such notice will appear in ElectionNet under System Reminders.

Supervisors shall also either remove a person's name from the checklist or send the person a 30 day notice letter if notice is received from the

United States Postal Service, the Department of Safety, directly or through the ElectionNet that the person has permanently moved from the town or ward where he or she is registered to vote. (Such action is unnecessary if the voters record has already been taken by another NH jurisdiction.) . The authority to remove a voter based on that person telling the Postal Service or the Department of Safety that they have moved was enacted by the Legislature in 2006. RSA 654:36-b provides:

*If the supervisors of the checklist receive a report from the United States Postal Service or the department of safety directly or as communicated by the secretary of state through the centralized voter registration database that a voter has permanently changed his or her address to another town, city, or state, they shall strike that name from the checklist at the next session for the correction of the checklist. As an alternative, the supervisors of the checklist may first send a 30-day notice letter and then shall remove the name from the checklist if the voter does not respond to that notice.*

Mail sent to a voter at the mailing address the voter last provided which is returned by the United States Postal Service indicating that the person has moved should trigger removal of the person's name from the checklist. The Secretary of State will be obtaining a list of people in the State who have moved from the United States Postal Service and will be sending notice of those moves in the ElectionNet (SVRS). If the Supervisors have reason to believe the notice is in error, then a 30 day letter should be sent to the voter before removal of the voter's name from the checklist.

**PARTY AFFILIATION CHANGES.** A voter may change his or her party affiliation any time the supervisors are in session, except between the first day of the filing period for a primary up to the day of the primary election. The Board of Supervisors must hold at least one meeting prior to the filing period for the change of registration of legal voters. RSA 654:34. When existing NH voters move from one NH town of city to another, they can register to vote in the party of their selection.

**CHECKLIST CHANGES; CHANGE OF ADDRESS.** If the supervisors become aware that a person has moved within their community, they must change the address on the person's voter registration form and in ElectionNet (SVRS). If the supervisors become aware that a street name has changed, they should change the address on the person's voter registration form and in ElectionNet (SVRS.)

**SESSIONS - STATE ELECTIONS.** The supervisors must hold one session prior to any state election; it must be held on the Saturday 10 days before the election. RSA 654:28. If the session which is to be held on a Saturday falls on a holiday weekend (i.e. Labor Day) then the Board of Supervisors must hold the session on the Tuesday 7 days before the election between 7:00 p.m. and 7:30 p.m. RSA 654:27; RSA 654:28.

The session which is held on the Saturday 10 days prior to election day shall be held as a minimum requirement between 11:00 a.m. and 11:30 a.m. provided, however, that if the Saturday session falls on a holiday weekend, that session shall be held on Tuesday, 7 days prior to the election, between 7:00 p.m. and 7:30 p.m. RSA 654:28.

Before the presidential primary, the session shall be on the day preceding the first day of the filing period, between 7:00 p.m. and 7:30 p.m. and at the discretion of the Board of Supervisors for extended hours. Before the state primary election, the session shall be on Tuesday before the first Wednesday in June between 7:00 p.m. and 7:30 p.m. and at the discretion of the Board of Supervisors for extended hours. RSA 654:32.

The session held on the day immediately prior to the first day of the filing period for candidates for town offices is now to be held between 7:00 p.m. and 7:30 p.m. or for a longer period if the supervisors so choose. RSA 669:5.

**SESSIONS - PRIMARY ELECTIONS.** In addition to the session required above, the supervisors must also hold one session for additions and corrections to the checklist prior to the filing period for state offices or the presidential primary. RSA 654:32.

**SESSIONS - LOCAL ELECTIONS.** For all town, city, village district and school district elections, the supervisors must hold a session on the Saturday 10 days prior to the election and on the day immediately prior to the first day of the filing period. RSA 669:5; RSA 44:5; RSA 670:3; RSA 671:5.

**ADDITIONAL SESSIONS.** The supervisors should hold as many meetings as necessary to allow citizens in the community an opportunity to register or change party. Supervisors may meet at any time as long as they post and/or publish notice of the meeting. RSA 654:27; RSA 654:32; RSA 91-A.

**POSTING CHECKLISTS.** No later than the 4th Tuesday before any state election, the supervisors shall post a current checklist at the town or city clerk's office or at town hall. At least 10 days prior to a session for alteration of party affiliation before a primary, the supervisors shall post a current checklist at the clerk's office or at town hall. Each posted checklist shall state the date, hour, and place of the upcoming session for checklist additions or corrections. RSA 654:26; RSA 654:27; RSA 654:33. On each posted checklist, the Board of Supervisors shall subscribe an oath as required by RSA 654:29.

**ADDITIONS TO POSTED CHECKLISTS.** Except for the additions made on election day, any changes shall be made to the previously posted checklist on or before midnight on the succeeding Friday. Notice shall also be given to the town or city clerk. RSA 654:28.

**THE REGISTRATION FORM.** The supervisors should make sure they have a sufficient supply of a standard Voter Registration Forms for themselves and the city or town clerk. RSA 654:7.

## **SUBMITTING NOMINATION PAPERS TO SUPERVISORS OF THE CHECKLIST.**

Completed nomination papers for third party candidates must be submitted for certification to the supervisors in the community in which the voter is registered no later than 5 p.m. on the Wednesday 5 weeks prior to the State Primary Election. The supervisors are to verify that the person subscribing the nomination is a registered voter. The supervisors must have the certified nomination papers available for the candidate no later than 5 p.m. on the Wednesday 2 weeks prior to the primary. RSA 655:41-3. They should provide notice of such meetings in a manner consistent with RSA 91-A, which requires that at least two public notices be placed 48 hours prior to the meeting..

**ADDITIONAL POLLING PLACES.** The supervisors must prepare a list of the voters entitled to vote in the polling place and no later than 14 days prior to the election they must post a copy at the town or city clerk's office or at the town hall. They must also give the town clerk 2 copies of that checklist. RSA 658:12.

**COPIES OF THE CHECKLIST.** The supervisors are required to provide copies of the checklist to those who request it. Supervisors are urged to address all pending items that appear in System Reminders of ElectionNet prior to providing copies of the checklist. The Supervisors may only provide checklist information for their own town or city. The supervisors may charge a fee of up to \$25 for each copy of the public checklist for a town or ward.. For public checklists containing more than 2,500 names, the supervisors of the checklist may charge a fee of up to \$25, plus \$0.50 per thousand names or portion thereof in excess of 2,500, plus any shipping costs. The supervisors of the checklist may provide public checklist information on paper, computer disk, computer tape, electronic transfer, or any other form. RSA 654:31, II.

The Secretary of State may sell copies only of the entire statewide checklist at a cost based on a \$25 fee plus \$.50 per thousand names, or currently approximately \$450.00. If the checklist information

is obtained from the Secretary of State, it is a crime to knowingly use the checklist information for commercial purposes such as selling or offering for sale any property or service unrelated to an election or political campaign. RSA 654:31, III. Any fees the Secretary of State receives are to be deposited into the election fund that is used for election related purposes such as voter and election official education.

The Secretary of State is authorized to provide the State and federal courts with a copy of the entire statewide checklist. Towns and cities will no longer be required to provide the courts with their checklists.

The non-public checklist, that is the list of voters who are under protective orders related to domestic violence, may not be provided to anyone without a court order, other than law enforcement.

## **ELECTION DAY DUTIES – SUPERVISORS OF CHECKLIST**

**ATTENDANCE AT ELECTION.** Supervisors shall be present at the opening of each election at which a checklist is to be used and shall remain in attendance until the close of the election. RSA 659:10.

**ELECTION DAY REGISTRATION.** Any person qualified as a voter may register to vote with the supervisors on election day at any election. RSA 654:12.

**ELECTION DAY PARTY CHANGES.** Undeclared voters may, after declaring a party and voting, sign the list of undeclared voters created in ElectionNet and provided at the polls to return to undeclared status on election day. The list shall be retained by the person so designated and submitted to the Board of Supervisors. RSA 654:34, II.

No person, who is already registered to vote, whether his or her party membership has been previously registered or not, shall affiliate with a party or disaffiliate from a party between the first

Wednesday in June and the day before the state primary election. RSA 654:34, IV. However, persons moving from one NH jurisdiction to another may change their party when they register in the new town.

Voters who have declared an affiliation must change their affiliation before the first Wednesday in June or they are limited to voting in the primary of the party with whom they are affiliated on primary day. A declared voter may change his or her affiliation on primary day, but then he or she may not vote in that primary. RSA 654:34.

**PROCEDURE FOR ACCEPTING VOTERS.** Any unregistered person who wishes to vote in any election shall proceed directly to the supervisors of the checklist to register in the polling place. He or she shall complete the registration form. RSA 654:12. If a voter's name does not appear on the checklist, the supervisors will determine if that person has been unjustly dropped from the checklist or omitted in error. If so, the supervisors should certify to the moderator that the voter is indeed registered and entitled to vote. RSA 659:12.

**CHALLENGES.** The supervisors may be called on by the moderator to determine whether a challenged voter is qualified to vote. When the identity, age, citizenship, or domicile of a voter is challenged, it is the duty of the supervisors, when requested by the moderator who hears the challenge, to consider any evidence offered and then to determine if the person is qualified as a voter.

Challenges on other grounds, such as a claim that the voter has already voted in the election are decided by the moderator.

## **POST-ELECTION DAY DUTIES – BOARD OF SUPERVISORS**

**PRESERVATION OF CHECKLIST.** After each state general election and a presidential primary, one marked copy of the checklist used at the election must be forwarded to the State Archives in Concord. State Archives, 71 South

Fruit Street, Concord, New Hampshire 03301-2410.

An unmarked copy of the checklist must also be forwarded, only after a general election at which a president is elected, to the Federal District Court in Concord. U.S. District Court, District of New Hampshire, 55 Pleasant Street, Room 110, Concord, NH 03301-3941. Names of any voters who registered to vote on election day shall be included on the checklist. RSA 654:7-b. After every election, a marked copy of the checklist must be preserved by the town or city clerk as a public record, for a period of at least 5 years. RSA 659:102.

**Correcting Data Files** After each state election the supervisors shall use the checklist from such election to correct the data in the records of registered voters in ElectionNet (SVRS). RSA 654:30.

**Updating voter history.** After each election, the supervisors should use the bar code scanner to record whether a person voted in the election and, if a primary, whether undeclared voters returned to undeclared status after choosing a party ballot. This record will permit easy tracking of party registration status and will help in identifying and prosecuting voter fraud.

## **X. TOWN CLERK DUTIES**

### **PRE-ELECTION DAY**

#### **ACCEPTING APPLICATIONS FOR REGISTRATION AS A VOTER.**

Town and city clerks are required, during regular office hours, to accept applications for registration as a voter and, subject to guidelines issued by the supervisors of the checklist, to take evidence of the applicant's qualifications as a voter. RSA 654:8.

The ultimate determination of whether the applicant is placed on the checklist is made by the supervisors of the checklist.

In cities, the city clerk receives evidence of change of domicile from one ward to another, from any person already registered to vote and the clerk notifies the registrar of which polling place the voter is to be permitted to vote. RSA 654:8-a.

Clerks must also accept applications for change of party affiliation. The Clerk shall require an applicant to give an oath or affirmation affirming his or her affiliation. The Clerk must present such applications for change of party affiliation to the supervisors of the checklist who shall cause the party affiliation to be changed on the checklist as soon as permitted by law. RSA 654:34-a. A change in party affiliation must be documented in ElectionNet (SVRS).

**NOTICE OF FILING PERIOD - STATE PRIMARY ELECTION.** Before the opening of the filing period for a state primary election, the Secretary of State will send the Notice to Voters of the State Primary Election to all city and town clerks. City clerks are to forward these notices to ward clerks. Within 10 days of his or her receipt of this notice, the town or ward clerk shall fill in the information and post them in two public places within the town or ward. These notices serve as the warrant for the State Primary. RSA 655:11; RSA 655:12.

**DECLARATION OF CANDIDACY AND PRIMARY PETITIONS.** Prior to the opening of the filing period for a State primary, the

Secretary of State will provide each town and city clerk with a supply of Declarations of Candidacy forms and primary petitions. Only party candidates for state representative or delegate to the Republican state convention shall file with the town or city clerk. RSA 655:15.

Declarations of candidacy and primary petitions must be mailed by the town or city clerk to the secretary of state on the same day they are filed. RSA 655:18.

**PRIMARY PETITIONS.** It is the duty of the town or city clerk to examine the primary petitions filed by a candidate for State Representative or Delegate to the Republican state convention. If a petition is found to be in conflict with the law, the clerk shall note the reason it is not acceptable on the petition and return it within 24 hours to the candidate. For each petition that is rejected, the candidate may file a supplementary petition with the clerk no later than the last day of the filing period for declarations of candidacy. RSA 655:26.

**POSTING OF SAMPLE BALLOTS - STATE AND PRESIDENTIAL PRIMARY ELECTIONS.** The package of primary election ballots will include 10 sample ballots for each political party. The clerks must post 2 sets of sample ballots in public places in the town or ward within 1 day after he or she receives them. The remainder of the sample ballots are to be posted in the polling area on election day. RSA 656:28. Post one of each party's sample ballot at a height of 48" so as to be conveniently read by voters in wheelchairs.

**POSTING OF SAMPLE BALLOTS - STATE GENERAL ELECTION.** Ten sample ballots are printed and sent to the town or ward clerk to be posted in 2 public places within the community. The remainder of the sample ballots are to be posted outside the guardrail in the room in which the voting is to be held. RSA 656:18; RSA 658:26. Post one sample ballot at a height of 48" so as to be conveniently read by voters in wheelchairs.

**PRINTING OF LOCAL ELECTION MATERIALS.** The town or city clerk must prepare regular ballots and instructions to voters and provide for absentee ballot envelopes for local elections. The clerk may save the purity of elections from the state election or request an additional copy from the Secretary of State. The other forms provided by the Secretary of State may be used for local elections. RSA 658:29; RSA 666.

**ABSENTEE BALLOT APPLICATIONS.** An individual desiring to obtain an absentee ballot must apply to the town or city clerk. RSA 657:4; RSA 657:6.

RSA 657:12 and RSA 657:13 provide that an **application** for an absentee ballot may be transmitted by facsimile to a town or city clerk.

**RECEIPT OF APPLICATION AND VERIFICATION.** Upon the receipt of an application for a regular absentee ballot, the clerk shall verify that the applicant's name is on the checklist.

Armed Services Absentee voters and Overseas Citizens absentee voters need not be registered to be sent an Armed Services or a Federal Overseas Citizens absentee ballot and affidavit envelope provided the applicant applies using the Armed Services Absentee Ballot Application or the Federal Post Card Registration and Absentee Ballot request form. RSA 657:12; RSA 657:13; RSA 657:19-a.

If the regular absentee ballot applicant's name is not on the checklist, the clerk shall provide the applicant with written notice of what he or she needs to do to get registered and the forms necessary to register along with an absentee ballot,, marking the affidavit envelope provided for return of the absentee ballot with the words “not registered.” RSA 657:16.

**MAILING OR DELIVERY OF ABSENTEE BALLOTS.** The clerk must mail or personally deliver the absentee ballot, making certain that the appropriate ballot, envelopes, and instructions are enclosed. The clerk may designate an assistant to

deliver an absentee ballot provided that the assistant is not a candidate for office or working for a candidate. RSA 657:15.

**LIST OF ABSENTEE VOTERS.** The clerk shall maintain a list in ElectionNet, arranged by voting place, of all (regular, federal overseas and armed services) applicants to whom absentee ballots have been sent, and shall identify on the list those ballots which have been returned by the voter. RSA 657:15. By this means, clerks will fulfill their federal reporting obligations and assist the federal government in its effort to analyze and improve the nation’s capacity to fully enfranchise its military and overseas voters. U.S. Public Law 107-252, Section 703.

A copy of this list shall be provided to a candidate, at cost, upon receipt of a direct request from the candidate or to a person presenting an original or a copy of a notarized request from a candidate. RSA 657:15.

**RETURN OF MARKED BALLOTS.** A voter who has received an official voting ballot must either mail or personally deliver it to the town or city clerk. RSA 657:17.

If personally delivered, the voter, himself or herself, must deliver the ballot to the clerk’s office. Clerks are not authorized by law to receive completed absentee ballot return envelopes from anyone other than the voter or the U.S. Postal Service.

The law creates an effective deadline of the day before the election for a voter to personally return an absentee ballot. Clerks or a designee are required to be available between the hours of 3 p.m. and 5 p.m. on any day that is a deadline for an election law filing. RSA 652:20.

Absentee ballots delivered by mail shall be accepted by the town or city clerk no later than 5:00 p.m. on election day. RSA 657:22. If a voter appears in person at the polls to deliver an absentee ballot, the voter should be directed to vote in person using an election day ballot. The voter may keep the absentee ballot/envelope or it may be marked as “voted in person” and added

to the challenged absentee ballots that are not opened and which are preserved with other ballots.

**RECEIPT OF MARKED BALLOTS.** Upon receipt of a marked regular absentee ballot, the clerk should preserve the ballot sealed in the return envelope and attach the voter's absentee ballot application form to the return envelope. RSA 657:18.

Any absentee ballots received in the mail prior to 5:00 p.m. on election day must be considered valid if properly filled out. RSA 657:22.

If the absentee ballot is from a member of the armed services or an overseas citizen, and his or her name is not on the checklist, the name should, by virtue of the completed absentee ballot and properly executed affidavit envelope be added to the checklist by the supervisors of the checklist. RSA 657:21.

**SUPPLYING BALLOTS, CHECKLISTS, FORMS.** The clerk must bring the ballots, absentee ballots, checklist from ElectionNet and election forms supplied by the Secretary of State for election day.

**INSPECTING BALLOT CONTAINERS.** The town or city clerk must open all boxes of ballots received from the secretary of state for a state election in the presence of at least one other voter as soon as possible after those boxes are received. The clerk must verify that the ballots are the proper ones for that town or city and then reseal the boxes using the sealing labels provided in the box. RSA 656:20; RSA 656:22; RSA 656:29.

**Deadline Day for filing.** Whenever the election laws require a filing with or an action by an official, such filing or action shall be performed before 5 o'clock in the afternoon of the stipulated day. If the official is the school or town clerk, the school district clerk or his or her designee, or the town clerk or his or her designee, shall arrange his or her time so as to be available between the hours of 3 o'clock and 5 o'clock. RSA 652:20.

**City Clerk – Chief Election Officer.** The city clerk is the chief election officer for the city and has the duty to establish uniform practices and procedures for all elections conducted by the city. The practices and procedures must conform to state and federal law. RSA 652:14-a. Therefore, while the moderators of each ward remain in charge of that ward's polling place, the moderator must follow any uniform practices or procedures established by the city clerk. RSA 659:9-a.

## **NURSING HOME – ABSENTEE REGISTRATION/VOTING**

Residents of Nursing Homes and similar facilities, while encouraged to vote in person on election day if they are able to do so, are frequent absentee voters. Over the years several municipalities have reported incidents causing concern for whether nursing home residents were being unduly influenced when marking their absentee ballots. While not required by law, many clerks arrange an absentee registration and voting event at the nursing homes and similar facilities within their municipality. Either in person or through a designee, the clerk has the nursing home recreation/activities director plan, publicize, and organize a voting event for some day close to but prior to the election. The clerk, a deputy clerk, supervisors, or some trusted non-partisan designee of the clerk goes to the home and assists those residents who will be unable to travel to the polls on election day with registering absentee, if needed, and voting absentee. This process ensures that no one is able to unduly influence the residents as they make their voting choices. The Secretary of State and the Attorney General's staff are available to assist in training designees or otherwise organizing this type of registration/voting event.

## **ELECTION DAY DUTIES – TOWN CLERK**

**PROCEDURE FOR ACCEPTING VOTERS.** When the voter has completed marking the ballot, he or she checks out with the



clerk by approaching the checkout table and stating his or her name (name and party, if a primary) to the town or ward clerk. The clerk places a mark beside the voter's name on the checklist. Towns and cities using ballot counting machines are not required to have a checkout table. RSA 659:23.

**DELIVERY OF ABSENTEE BALLOTS TO MODERATOR.** On election day, prior to the time set for processing absentee ballots the town clerk shall deliver the absentee ballot envelopes received from absentee voters, with the applications attached, to the moderator. RSA 657:23.

Because the deadline for receipt of absentee ballots is 5:00 p.m. on election day, clerks should arrange to have U.S. mail received on election day picked up and any absentee ballot return envelopes received by 5:00 p.m. that day, even if delivered after the time set for opening absentee ballots, delivered to the moderator before the close of the polls. RSA 657:22.

**OUT OF BALLOTS.** If the supply of official ballots shall become exhausted the town or city clerk shall prepare additional unofficial ballots as provided in RSA 658:35. Photocopies should be made of an unused official ballot. Each photocopy ballot should be signed or initialed by the clerk prior to being issued to the voter, to distinguish any such unofficial ballots from fraudulently created ballots. RSA 659:24.

As an alternative to photocopying ballots, the clerk may use leftover absentee ballots. In that event, the clerk should cross out the word "absentee" and initial the absentee ballot prior to being used by the voter.

Generally at least ten such ballots should be used. If fewer than ten unofficial ballots will be needed, avoid any procedure that would make the ballot(s) used by the last few voters identifiable.

Clerks should monitor the voter turnout and anticipate the need for additional ballots so that he or she can be prepared before the official supply is exhausted. RSA 659:24.

**COUNTING THE BALLOTS.** The moderator is responsible for supervising the counting of ballots. The town clerk, selectmen, and other election officers should participate in the ballot counting process as directed by the moderator. RSA 659:60.

**REPORTING THE RESULTS.** After all state election ballots have been counted, the town or ward clerk must report the results on the Return of Votes form provided by the Secretary of State as soon as possible. The ward clerk should send copies to the city clerk. The city or town clerk should also keep a copy of the Return of Votes. RSA 659:75.

**DELIVERY OF BALLOTS.** The election officers designated to deliver the ballots to the clerk should deliver the cast and counted ballots in a sealed container to the town or city clerk. In the presence of these officials, the clerk shall subscribe upon the label the time when the ballots are received and sign his or her name in the appropriate blank on the sealer. RSA 659:98.

**SPOILED AND UNUSED BALLOTS.** The spoiled and unused ballots shall be preserved in suitable containers with the cast ballots. RSA 659:96.

## **TALLY SHEETS NOT SEALED IN BALLOT BOX**

To permit review of tabulation results after the election, election night tally sheets should not be sealed in the ballot box.

## **POST ELECTION DUTIES – TOWN CLERK**

**TIE VOTES.** In the case of a tie vote at any town election, the winner shall be determined by lot by the town clerk in the presence of the candidates who are tied, if upon notice from the clerk, they choose to be present. RSA 669:36.

## BALLOTS - RIGHT TO KNOW LAW

Ballots are explicitly exempted from the Right-to-Know law, RSA 91-A, by RSA 659:95, II; RSA 660:16, II; and RSA 669:33, II. Ballots must be sealed into containers at the end of counting on election day and must be preserved in those sealed containers until opened by order of the Secretary of State or in local elections by the Board of Recount. Even then the sealed containers must be opened under conditions that preserve the integrity of the ballots and upon completion of the recount, the ballots must be resealed. Upon order of the Ballot Law Commission or a court hearing an appeal from a recount, protested ballots should be made available to the Commission or the Court, but even then under the control of the Secretary of State or the Clerk, except when in actual possession of the court.

## RIGHT TO KNOW LAW – VOTER REGISTRATION RECORDS

In 2006 the Legislature amended RSA 654:31-a, the exemption from the Right-to-Know law for information on the voter registration form and on the checklist. Now all information is non-public except the voter's name, the SVRS ID number, physical street address, mailing address, town, city, party affiliation, if any, and any record of whether the person voted in past elections.

Citizenship and Domicile Affidavits are public information for the sole purpose of challenging an individual registering to vote or voting or to determine the accuracy of any citizenship or domicile affidavit.

*Right to Know Exemption. The information contained on the checklist of a town or city, specifically, the name, street address, mailing address, town or city, and party affiliation, if any, of registered voters, except as otherwise provided by statute, is public information subject to RSA 91-A. All other information on the voter registration form, absentee registration affidavit, citizenship and domicile affidavits, and application for absentee ballot*

*shall be treated as confidential information and the records containing this information shall be exempt from the public disclosure provisions of RSA 91-A, except as provided by statutes other than RSA 91-A. Notwithstanding the foregoing, citizenship and domicile affidavits are public records subject to RSA 91-A for the sole purpose of challenging an individual registering to vote or voting, challenging ballots to be recounted, to the extent that such ballot challenges are specifically authorized by law, or determining the accuracy of any citizenship or domicile affidavit. Election officials and law enforcement personnel in furtherance of their official duties may access and may disclose information from the voter registration form, citizenship and domicile affidavits, absentee registration affidavits, and applications for absentee ballots, if necessary to resolve a challenge to an individual registering to vote or voting, or if necessary to investigate or prosecute election law violations or any crime. Law enforcement access and use of such records for the investigation or prosecution of crimes unrelated to election law violations shall be limited to the records of specific individuals who are the subject of the investigation or prosecution.*

RSA 654:31-a.

## STATEWIDE DATABASE OF REGISTERED VOTERS – RIGHT TO KNOW LAW

The federal Help America Vote Act of 2002 requires the establishment of a statewide database of registered voters. The database, entitled ElectionNet, is operational and must be used by all jurisdictions in the federal-state primary and general elections in 2006. All information in the statewide database will be exempt from the Right-to-Know law, except for the public information identified above. Individuals wanting to obtain checklists will still have to pay the fee to the towns and cities and obtain them from the

supervisors of the checklist or the supervisor's designee. In limited circumstances, the public information in the statewide database can be purchased from the Secretary of State.

In 2003, the Legislature established RSA 654:45, which in section VI provides:

"The voter database shall be private and confidential and shall not be subject to RSA 91-A and RSA 654:31. The voter checklist for a town or city shall be available pursuant to RSA 654:31. Any person who discloses information from the voter database in any manner not authorized by this section shall be guilty of a misdemeanor."

**PRESERVATION OF BALLOTS.** The clerk shall preserve State election ballots used solely for the purpose of a statewide referendum or constitutional amendment for 60 days after a state or local election. State primary, presidential primary, and general election ballots, because they are also used for federal offices, are required by federal law to be preserved for twenty-two months. 42 U.S.C. 1974.

If a recount is requested for a state election, the ballots will be collected by the Secretary of State. If a recount is conducted for a local election, the ballots must be retained for at least 60 days from the date of the recount unless some legal action regarding those ballots is pending. RSA 659:100; RSA 669:33.

Absentee ballot return envelopes received after election day shall be preserved unopened in the same manner as ballots used at the election and shall be destroyed, unopened and unexamined, when the other ballots used in that election are destroyed. RSA 657:22.

**PRESERVATION OF CHECKLIST.** After every election, state or local, a marked copy of the checklist must be preserved by the town or city clerk as a public record for a period of at least 5 years. RSA 659:102. Supervisors should record in ElectionNet whether a voter cast a ballot in the election, using the bar code scanner.

## **PRESERVATION OF AFFIDAVITS AND ABSENTEE VOTING MATERIALS.**

Absentee ballot affidavit envelopes and any other affidavits required for election purposes must be preserved for three years after the first state general election at which the individual who made the affidavit votes. This period of time was increased from one year to three years in 2006. RSA 659:101

## **TOWN ELECTIONS- TOWN CLERK DUTIES**

**FILING FOR OFFICE.** If the town uses non-partisan official ballots, candidates who desire a certain office must file a declaration of candidacy with the town clerk during the 10 day filing period. A candidate must, at the time of his or her filing, pay the clerk a filing fee of \$1, unless the office he seeks offers no salary or compensation. In lieu of the fee, a candidate may submit 5 nomination petitions unless the town has previously voted to require a number larger than 5. RSA 669:10-21.

**WITHDRAWAL OF CANDIDACY PROHIBITED.** After a filing period for a non-partisan town election, or after a caucus has certified a nominee for a partisan election, the town clerk may not accept withdrawals of candidacy unless the candidate dies or makes oath that he does not qualify because of age, domicile or incapacitating physical disability acquired subsequent to his or her filing. RSA 669:22.

**ABSENTEE VOTING.** Towns using official ballots must provide for absentee voting whenever official ballots are used. Absentee ballots must be printed on the same color paper as regular ballots and similarly endorsed. The words "Absentee Ballot" shall be printed on them. Absentee ballots and other absentee voting materials must be prepared and sent out by the town clerk. RSA 669:26-29. ElectionNet has a ballot preparation module that should be used to prepare ballots for municipal elections.

Requests for an absentee ballot may be faxed to the clerk. RSA 657:12-13.

## RECOUNT FEES

**SAMPLE BALLOTS.** The town or city clerk shall print at least ten sample ballots for each town or ward. Such ballots shall be printed on tinted paper without facsimile endorsement, but shall otherwise be identical to the official ballot. RSA 656:18.

**PRINTING OFFICIAL BALLOTS.** The order of offices is left to the discretion of the town clerk for local elections. Most town clerks print the offices which a town is required to elect first on the ballot - moderator, selectmen, town clerk, board of supervisors of the checklist. Optional offices such as auditor, sewer commissioners, constable, etc. are usually printed further down the ballot. Following the names printed on the ballot under the title of each office, there shall be as many blank lines as there are persons to be elected to that office. Names must be printed in alphabetical order of surname.

A candidate should specify the form of his or her name to be placed on the ballot. For State offices, a candidate must use his or her legal name in any combination provided the name designated is not deceptive. RSA 655:14-b. Nicknames are permitted in limited circumstances.

Questions to voters to be printed on an official ballot may be printed beneath the offices to be filled or on a separate ballot at the discretion of the town clerk. Questions should be followed by the words "yes" and "no" with boxes for the voter to indicate his or her preference. RSA 669:23.

**REQUEST FOR RECOUNT IN TOWN ELECTIONS.** A candidate for town office may request a recount of the ballots cast. The application must be in writing and submitted to the town clerk with the appropriate fee. Following a Tuesday election, the last day to apply for a recount is 5 PM on Friday of the same week. The deadline for requesting a recount of a question that appeared on the official ballot of the Town, on a question that affects only the Town, is 7 days after the meeting or special meeting. RSA 669:30-35; RSA 40:4-c; RSA 40:4-d.

The Legislature in 2003 changed the fees that must be paid and the circumstances under which fees must be paid. The charge goes up based on the percentage difference in votes received, as determined at the election night count, by the winner and the person requesting the recount.

If the person requesting the recount, however, wins the recount, the fee must be refunded or if the recount results in a difference of less than one percent any charge made beyond the statutory fee must be refunded.

*I. The clerk shall notify each of the candidates for the office for which there is to be a recount at least 3 days prior to the day appointed for the recount of ballots. No other notice shall be required.*

*II. The applicant shall pay to the town clerk, for the use of the town, the following fee:*

*(a) If the difference between the vote cast for the applying candidate and a candidate declared elected is less than one percent of the total votes cast, the fee shall be \$10.*

*(b) If the difference between the vote cast for the applying candidate and a candidate declared elected is between one percent and 2 percent of the total votes cast, the fee shall be \$20.*

*(c) If the difference between the vote cast for the applying candidate and a candidate declared elected is between 2 percent and 3 percent of the total votes cast, the fee shall be \$40.*

*(d) If the difference between the vote cast for the applying candidate and a candidate declared elected is greater than 3 percent of the total votes cast, the candidate shall pay the fee as provided in RSA 669:31, II(c) and shall agree in writing with the town clerk to pay any additional costs of the recount.*

*III. If any person who has applied for a recount is declared elected by reason of the recount, the town clerk shall return to the person within 10 days of the recount all fees paid at the time of applying.*

*IV. If any person who has applied for a recount loses the recount by a margin of less than one percent of the total votes cast, the town clerk shall return to the person within 10 days of the recount any fees that were paid in excess of those required by subparagraph II(a).*

RSA 669:31

**SCHEDULED TIME FOR THE RECOUNT.** The clerk then appoints a time for the recount which is not earlier than 5 days, nor later than 10 days after receipt of the application. This period allows all recounts requested for an election to be held at one time if the clerk so wishes. The clerk must notify each candidate of the scheduled date of the recount at least 3 days prior to the recount. RSA 669:30, RSA 669:31. It is recommended that the Clerk consult with the other members of the Board of Recount (Moderator and Selectman for towns; School District Moderator and School Board for School Districts) when scheduling the recount. See sample notice of recount at page 157.

**BOARD OF RECOUNT.** The recount is conducted by a board of recount composed of the town clerk, moderator and selectmen. An election officer whose election is being recounted must disqualify himself or herself from the recount. The moderator would then appoint a replacement.

Candidates or their representatives ought to be given an opportunity to view, but not handle, the ballots at the recount and to record any protests he or she may have to how a particular ballot is counted. RSA 669:32.

**RECOUNT ON QUESTION.** Any 10 voters may request a recount of a question voted on by the town by the Australian or nonpartisan ballot, by applying to the town clerk before the expiration of

7 days from the date of the election. The fee is \$10. The clerk shall set the time for the recount not earlier than 5 days nor later than 10 days after the receipt of the application. RSA 40:4-c.

**RESEALING OF BALLOTS.** Following the recount, the ballots are resealed and preserved by the town clerk for at least 60 days unless otherwise instructed by a court or the Ballot Law Commission. RSA 669:33.

**RECORD – OATH OF OFFICE.** The town clerk shall make a record of every oath of a town officer taken in open town meeting at the time of the election, and of every such oath taken before him or her at any other time and place. The town clerk shall record and keep on file every certificate of an officer being sworn in before a selectman or justice of the peace. RSA 42:8. See oath of office at page 129.

**ASSUMING THE OFFICE.** No person shall assume a town office until after the time period for requesting a recount is over. If a recount is requested for a town office, no person shall assume that office until the recount is completed. RSA 669:10. Once a recount is completed the outcome determines when the candidate assumes office.

If the candidate who was declared the winner at the original count on election day is also declared the winner at the recount the law makes no provision for delaying the declaration or certification of the results or the assuming of office.

If a candidate other than the candidate originally declared the winner by the moderator on election day is found to be the winner after the recount the board of recount shall declare such person elected, but shall wait 5 days and then certify to the town clerk that the person was elected only if an appeal has not been taken to the Superior Court. RSA 669:34.

Because the term of office continues until the election and qualification of the office holder's successor, the person holding the office prior to the election would continue to hold the office

until either the certification after the 5 day waiting period or if the recount is appealed, until the Superior Court issues an order. RSA 669:10; I; RSA 41:3.

## XI. SELECTMEN DUTIES

### PRE-ELECTION DAY

**APPOINTING INSPECTORS OF ELECTION.** If the two major political parties fail to make appointments before October 15, the Selectmen shall appoint 2 inspectors of election from the two political parties. If the number of voters qualified to vote at a polling place exceeds 2000, one additional inspector from each political party may be made for each 1500 qualified voters. An inspector of election shall be registered to vote at the polling place where he or she serves and shall be affiliated with one of the two major political parties. Each inspector shall be sworn to the faithful performance of his or her duties and shall hold office for 2 years from November 1 in the year in which he or she is appointed or until a successor is appointed and qualified. RSA 658:2 – 4.

**ALTERNATES.** In making appointments of inspectors of elections, the selectmen may designate a list of alternates, who shall meet the same qualifications as inspectors of elections, to be called in numerical order to serve in case one or more of the principal appointees fails to accept the appointment or is otherwise unavailable to perform his or her duties. RSA 658:5.

**ABSENCE OF AN INSPECTOR OF ELECTION.** If an inspector of election is absent from any election, the selectmen shall appoint replacement inspectors using the list of alternate inspectors. RSA 658:22.

**WARRANT ARTICLES.** Upon petition of 25 or more voters or 2 percent of the registered voters, whichever is less, but in no event less than 10 voters, presented to at least one selectman no later than the fifth Tuesday before town meeting, the selectmen shall insert onto the warrant for that meeting the petitioned article. RSA 39:3.

**POLLING PLACE.** Selectmen are responsible for selecting a proper site for the polling place,

ensuring it is accessible, providing a proper number of voting booths, establishing a rail and providing the necessary supplies. RSA 658:9. The polling place must be:

- Warmed;
- Lighted – It is strongly recommended that where room lighting does not provide sufficient illumination inside the voting booth for comfortable reading, that supplemental lighting be provided. Towns and cities are encouraged to equip voting booths with inexpensive lamps equipped with a magnifying lens (*The Secretary of State has examples*). New Hampshire law requires that booths be “well lighted;”
- Furnished with proper supplies (see recommended lists at page 134 and 135);
- Easily accessible to the elderly and to persons with disabilities;
- Equipped with a United States flag inside the building and weather permitting flown outside the building during election day;
- Equipped with a guardrail constructed and placed so that only persons inside the rail can approach within 6 feet of the ballot box and any voting booth (This requirement for a rail can be satisfied with a rope or ribbon, but it is important to the proper layout of a polling place. The Attorney General’s Office reports that the failure to establish a rail is a common deficiency found during its inspections of polling places and that the statutory requirement for a rail will be enforced);
- Organized with the guardrail positioned so that the voting booths can be reached only by passing within the guardrail. The guardrail should be positioned in relation to the check-in and check-out tables such that once a voter has checked in and received a ballot it will be awkward to leave the railed in area with a ballot. Ballots should be marked only within the voting booth. The Attorney General’s Office reports a common complaint, particularly in Senate Bill 2 Towns, is that ballots are marked in public or carried outside the rail by voters, when the voting

booths are all in use. Proper positioning of the rail can be used by the Selectmen and the Moderator to discourage these improper voting practices.;

- Arranged so that the voting booths are in plain view of the election officers;
- Arranged so that the ballot box is in plain view of the election officers and to the public area outside the guardrail;
- Equipped with no less than one voting booth for every 125 voters qualified to vote at the polling place. Jurisdictions that have adopted Senate Bill 2 should analyze the length of their warrant/ballot for warrant articles and voting trends and consider adding additional voting booths to avoid excessive delays to voters seeking to cast their ballots. The Attorney General's Office reports that a common complaint, especially in Senate Bill 2 towns, is an excessive delay resulting from an insufficient number of voting booths to accommodate the turnout of voters and the extended time required to mark ballots with a large number of questions. RSA 658:9 provides that "the number of booths erected at the polling place shall be the number estimated by the selectmen to be necessary for the efficient conduct of the election plus any additional number requested by the moderator." Therefore, the Selectmen should consult the moderator when determining the number of booths that will be provided;
- RSA 658:9, II also provides specifically that each polling place shall have no less than two standard voting booths and one specialized voting booth easily accessible to the elderly and to persons with disabilities.
- Equipped with at least one voting booth specially designed in conformance with RSA 658:9, III, to be easily accessible to persons with disabilities and the elderly. The Secretary of State is providing every polling place in the state with a large voting booth that satisfies this requirement. This booth must be used at all elections.

RSA 658:9.

## **BALLOT COUNTING MACHINES.**

Selectmen (or the governing body of a city) may elect to use voting machines (ballot counting machines – optical scanning machines). If a decision is made to do so, the town or city must notify the Secretary of State. RSA 656:40.

Only manufacturers and models of ballot counting machines approved by the Ballot Law Commission may be used. RSA 656:41.

Each ballot counting machine must be tested prior to each election. RSA 656:42, II. Any person who knowingly violates the testing procedures established for ballot counting machines shall be guilty of a misdemeanor if a natural person, or a felony if a corporation. RSA 656:42, VI.

Effective January 1, 2007, the statute making it a felony crime to tamper with a vote casting or counting machine also makes it a felony to tamper with software used in the casting or counting of ballots or to design such software so as to cause incorrect tabulation of the ballots. RSA 659:42.

**POSTING OF WARRANT.** Selectmen are responsible for posting the warrant at least 14 days before the election. The warrant states the date of the election or town meeting, the location of the polling place, offices to be elected, the questions that will be on the ballot and the polling hours. RSA 658:1; RSA 669:2.

**ADDITIONAL SITES.** Selectmen are also responsible for equipping any additional polling place.

## **SPECIAL ELECTIONS**

If a vacancy exists in the office of State Representative the Selectmen must determine whether a special election will be requested from the governor and council. If the representative district encompasses two or more towns the selectmen from the towns should consult and seek to reach consensus regarding whether a



special election shall be requested. If there is a regularly scheduled election between 80 and 180 days from the date from the date when the governor and council declare that there shall be a special election and all of the municipal officials agree and request that the election be held with the regularly scheduled election, then the Governor and Council shall set the special election to occur with that regularly scheduled election. Otherwise, the special election shall be held no less than 80 nor more than 87 days following the declaration by governor and council. RSA 655:81, I.

## ACCESSIBILITY OF THE POLLING PLACE

The New Hampshire Constitution provides in pertinent part:

*“Voting registration and polling places shall be easily accessible to all persons including disabled and elderly persons who are otherwise qualified to vote in the choice of any officer or officer to be elected or upon any question submitted at such election.”*

New Hampshire Constitution, Part 1, Article 11.

State and federal statutes further establish that for every election the polling place and the voting process must be reasonably accessible. See RSA 658:9-a.

The Help America Vote Act of 2002 places great emphasis on ensuring the accessibility of the voting process. HAVA will fund the purchase of voting machines that will assist persons with disabilities and the elderly to vote privately and independently. The Secretary of State can provide more information and has staff available to consult with local election officials. See further discussion of accessibility starting at page 91.

Information on polling place accessibility is also available from the United States Department of Justice at:

<http://www.usdoj.gov/crt/ada/votingck.htm>

## ELECTION DAY DUTIES - SELECTMEN

**POLLING HOURS.** The selectmen or the governing body of a town or the governing body of a city sets the polling hours.

At all state elections in towns and cities the polls shall open not later than 11:00 AM and shall close not earlier than 7:00 PM. In cities, the city council shall determine the polling hours no later than 30 days prior to a state election.

An exception to the 11:00 AM to 7:00 PM time frame is found in those communities which voted to open the polls at 8:00 AM. The polling hours in those communities would be 8:00 AM to 7:00 PM. Once these hours have been set by a vote of town meeting, however, they may be altered only by a vote of town meeting. RSA 659:4-a

Municipalities are encouraged to establish a uniform polling place and polling hours for all elections. It helps voter to know when and where to vote if changes to the polling location and times are kept constant.

The Attorney General's Office reports that the failure to open the polls at the advertised time is a common problem. In some cases voters assert that the effect of failing to open on time is to deny them the opportunity to vote as work or travel commitments preclude their waiting extended periods of time or returning later in the day. Every effort should be made to ensure the polls open at the pre-determined and advertised time. RSA 659:3; RSA 659:4; RSA 659:4-a; RSA 659:6; RSA 659:8; RSA 669:25; RSA 669:45.

**ATTENDANCE.** The New Hampshire Constitution requires selectmen to attend elections for the choice of governor, council and senators. New Hampshire Constitution, Part 2, Article 32.

**ELECTION OFFICIALS.** Selectmen are election officers. The moderator may suggest

work stations within the polling place for selectmen. RSA 658:23-24; RSA 659:9.

Appropriate duties include checking the voting booths regularly to ensure that a writing instrument and the instructions to voters signs are present and that any electioneering materials or trash left by voters is removed. Selectmen are also authorized to accept the oath from an applicant for registration who must complete a citizenship or domicile affidavit. Selectmen may be assigned to assist the supervisors should a logjam of voters needing to give oaths occur.

**COUNTING OF BALLOTS.** Selectmen shall participate in the counting process as directed by the moderator, unless a selectman is a candidate for office. RSA 659:58.

**SECURING THE BALLOTS.** Selectmen or their designee shall sign the sealer on the container holding cast, canceled, and unused ballots, affidavits RSA 659:95; RSA 659:97. Selectmen should ensure that election night tally sheets are not sealed in the ballot box.

**DELIVERY OF BALLOTS.** The selectmen or their designee and the moderator or his or her designee shall deliver the sealed containers to the town or city clerk who shall in their presence enter in the time of day and shall sign his or her name on the sealer. RSA 659:98.

## **POST ELECTION DUTIES - SELECTMEN**

Selectmen are responsible for planning and budgeting sufficient funds to carry out elections and maintain the checklist.

## XII. ACCESSIBILITY

Our constitution and laws require every polling place to be easily accessible to all persons, including those persons with disabilities and elderly persons who are otherwise qualified to vote. In order for a polling place to comply with the requirements for accessibility, a number of specific conditions must be met. These conditions address the parking; the path of travel (to, from and within the polling place); the ramps (where provided); the entrance(s); the doors; the floor surfaces; and the voting booth(s). RSA 658:9-a.

RSA 658 establishes minimum conditions or standards that must be met if a polling place is to be considered accessible and in compliance. Since the passage of RSA 658, the federal *Americans with Disabilities Act* (ADA) has addressed many of these same standards. In most cases, the laws are complimentary, but there are differences.

**Our best advice on what constitutes an accessible polling place is discussed below by category.**

### **PARKING**

RSA 658:9-a, I. states –“*In parking lots adjacent to the polling place there shall be parking spaces designed for the disabled and marked with the international symbol of accessibility. The designated parking spaces shall be at least 12 feet wide and on a level surface suitable for wheeling a wheelchair. The designated parking spaces shall be as close as possible to the accessible entrance. In such parking lots, there shall be a clear path of travel without curbs or steps to the entrance of the polling place.*”

In order to satisfy all of the requirements for **accessible parking-**

- An **accessible parking space** must be at least **96 inches wide** and have an **adjoining access aisle** that is **20 feet long** and **marked by diagonal stripes and a “No Parking” sign**. The stripes are preferably, but not necessarily, yellow in color.
- Accessible parking spaces must be located on **level surfaces**.
- There must be at least 1 accessible parking space in parking lots of 1 to 25 total parking spaces; 2 accessible parking spaces in parking lots of 26 to

50 total parking spaces; 3 accessible parking spaces in parking lots of 51 to 75 total parking spaces; 4 accessible parking spaces in parking lots of 76 to 100 total parking spaces; 5 accessible parking spaces in parking lots of 101 to 150 total parking spaces; 6 accessible parking spaces in parking lots of 151 to 200 total parking spaces; 7 accessible parking spaces in parking lots of 201 to 300 total parking spaces.

- **At least 1** designated accessible parking space must be located **as close to the main entrance as possible**.
- **At least 1** designated accessible parking space must be **Van Accessible**, that is, the parking space and an adjoining access aisle must each be 96 inches in width. **See figure 1**
- **Additional accessible parking spaces** must be **96 inches wide** but the **adjoining access aisles** need only be **60 inches wide and 20 feet in length**. Adjoining access aisles may be shared by accessible parking spaces. **See figure 2**
- All **accessible parking spaces must be marked** with an upright sign displaying the **international symbol of accessibility** that is mounted on a post or wall directly in front of the accessible space(s) at a minimum height of 60 inches (measured vertically from the parking surface to the bottom of the sign). Signs should be mounted so that they can be viewed from the driver’s seat of a vehicle and in such a way that they cannot be obscured by a vehicle parked in the accessible space. **See figure 3**

**NOTE:** Marked pavement may be helpful but **it is not required** and **does not satisfy** the requirement that accessible parking spaces be clearly marked.

### **ROUTES, SURFACES, WALKWAYS**

RSA 658:9-a, II. states II. “*The walks to and from the polling place shall have a continuous common surface not interrupted by steps or abrupt changes in level greater than one inch. The slope of the walks to and from the polling place shall be less than 5 percent or one in 20. Such walks shall be at least 48 inches wide, and there shall be a clear path of travel without curbs or steps to the entrance of the polling place.*”

In order to satisfy all of the requirements for **accessible route-**

- There must be a **completely clear path of travel** from the accessible parking to the entrance of the polling place.
- The accessible route to and from the polling place must be at least **36 inches wide**. *Note: 658:9-a, II states 48 inches but the ADA is more current and establishes 36 inches as the minimum.*
- The **slope** of the walks to and from the polling place shall be less than **5 percent or 1:20**.
- The accessible route to and from the polling place must have a **cross slope** (side to side tilt) that does not exceed a **2 percent grade or 1:50**.
- The route, or path of travel, must have a **continuous common surface** that is not interrupted by curbing, bricks, steps and other such features, or by damaged or eroded pavement. *Note: There is an exception to this requirement when a change in surface is used to indicate a curb ramp surface.*
- The continuous common surface cannot have a **change in level** that exceeds  $\frac{1}{4}$  inch. A change in level of between  $\frac{1}{4}$  and  $\frac{1}{2}$  inch must be beveled with a **slope** no greater than 1:12. If there is a change in level of  $\frac{1}{2}$  inch or more, then a curb ramp must be provided. **See figures 4&5**

**Note:** This addresses bumps or raised pavement, not slope.

- The accessible route surface must be **stable, firm and slip resistant**. (crushed stone, soft sand or mud are unacceptable).
- The accessible route must be kept **clear of snow and ice**.
- **Curb ramps** must be provided whenever an accessible route crosses a curb.
  - Curb ramps must be at least **36 inches** wide, exclusive of flared sides.

*Note: 658:9-a, III states 48 inches but the ADA is more current and establishes 36 inches as the minimum.*

- The **maximum slope** of a curb ramp shall be 1:12.
- The maximum slope of the side flares shall be 1:10. **See figure 6**
- There must be a **detectable warning**, i.e., a change in the texture of the surface, extending the full width and depth of the ramp so that a blind or visually impaired person may know by touch that they are entering a ramp.
- There can be no **protruding objects** such as trees, shrubs, awnings, signs, benches, or buckets that

interfere with the **36 inch** minimum clear width of an accessible route.

- Objects like **phones and fire extinguishers** may not protrude more than **4 inches** from a wall into the accessible route. Objects that do protrude more than **4 inches** into the accessible route must be mounted no higher than **27 inches** from the surface so that they are detectable by a person using a cane. **Objects hanging** or mounted overhead must be higher than **80 inches** to provide clear head room.

• **Note:** If an object like a fire extinguisher protrudes more than 4 inches and is mounted higher than 27 inches, place an object like a potted plant beneath it so that it can be detected by a person using a cane.

- An accessible route with a running slope (incline) greater than 1:20 (5%) is considered to be a ramp.

## RAMPS

RSA 658:9-a, IV. states “Where a ramp is provided:

- (a) The slope of the ramp shall be 1:12 or less.
- (b) The ramp shall be at least 48 inches wide.
- (c) Handrails shall be present on both sides of the ramp set no higher than 32 inches.
- (d) Handrails shall extend 12 inches beyond the top and bottom of the ramp.
- (e) The ramp shall have a non-slip surface.
- (f) There shall be level platforms 60 inches by 60 inches at the top and bottom of the ramp, or wherever a ramp changes directions at 30 foot intervals or less, if the ramp is longer than 30 feet.”

In order to satisfy all of the requirements for an **accessible ramp**-

- Any part of an accessible route that has a slope greater than 1:20 is considered to be a ramp.
- The least possible slope must be used for any ramp. **The maximum slope** is 1:12, i.e., 1 inch of rise for every 12 inches of run.
- An accessible ramp cannot exceed **30 feet** in length (run) and **30 inches** in rise. If a ramp must be longer than **30 feet** in length or **changes direction**, then there must be a **60**

**inch by 60 inch level platform** between the inclined sections of the ramp.

- The clear **width** of a ramp shall be a minimum of **36 inches**.
- There must be **level landings** that measure a minimum of **60 inches by 60 inches** at the top and bottom of every ramp and at every change in direction in the ramp run (sloped portion).
- The **cross slope** (tilt) of a ramp cannot exceed **1:50**.
- Ramp surfaces must be stable, firm and slip-resistant.
- Ramps and landings with **drop-offs** must have curbs, walls, railings or projecting surfaces that prevent a person from slipping off the ramp. Curbs must be a minimum of **2 inches** high.
- Ramps are required to have **handrails** on both sides that must:
  - be mounted between **34 and 38 inches** above the ramp or ground surface measured from the top of the rail.
  - have a clear space of **1½ inches** between the rail and any wall.
  - have **gripping surfaces** that are continuous and that do not rotate within their fittings.
  - **extend** a minimum of **12 inches** beyond the top and bottom ends of the ramp and be **parallel** with the ramp or ground surface.
  - be **rounded** at the ends or returned smoothly to the floor, wall or post. **See figure 7**

## ENTRANCES

RSA 658:9-a, V. states “Entrances, doors, and doorways shall comply with the following requirements:

- (a) There shall be at least one primary entrance to the polling place usable by elderly and physically disabled individuals and clearly marked with the international symbol of accessibility.*
- (b) The door width opening shall be at least 32 inches clear.*
- (c) The pressure required to open the outside door shall be 15 pounds or less. The pressure required to open the inside door shall be 8 pounds or less.*
- (d) The door hardware shall be operable with a closed fist and located between 36 inches and 42 inches above the floor.*
- (e) The thresholds to the polling place shall have changes in level of 1/2 inch or less.*

- (f) The floor inside and outside of each doorway of the polling place shall be level for a distance of 48 inches plus the width of any door swinging into the space. There shall be enough space on the "pull" side of the door to allow a wheelchair to pull to one side to open the door without backing.*
- (g) Automatic or power assisted doors shall operate in a manner and direction which is not hazardous.”*

In order to satisfy all of the requirements for an **accessible entrances-**

- There must be at least **1 primary accessible entrance** to the polling place which is clearly marked with the international symbol of accessibility. **Note: It is strongly recommended that the main entrance also be the accessible entrance.**
- **Doorways** must have a minimum clear opening of **32 inches** with the door open **90 degrees** measured from the face of the door to the opposite stop. **See figure 8**
- Two hinged or pivoted doors in a series must have between them a minimum space of **48 inches plus the width of any door** swinging into the space between them. **See figure 9**
- Doors in series must either both **swing in the same direction** or both **swing away** from the space between the doors. **See figure 9**
- A door that requires a pull motion to open must have enough space (**18 inches minimum**) on the pull side of the door to allow for the safe maneuvering of a wheelchair. **See figure 10**
- The **pressure** required to open an **outside door** must be **15 pounds** or less. The **pressure** required to open an **inside door** must be **5 pounds** or less. **Note: There is no ADA standard for an outside door. RSA 658:9-a specifies an 8 lb. maximum for an inside door but the ADA establishes 5 lbs.**
- **Door hardware** must be operable with a closed fist. **See figure 11**
- **Door hardware** must be **located** between **36 inches** and **42 inches** above the ground.
- The **floor** inside and outside of each doorway of a polling place must be **level** for a distance of **48 inches plus the width of any door** swinging into the space.

- Automatic or power doors must operate in a manner and direction that is not hazardous. **Note: automatic or power assisted doors are not required.**
- The **thresholds** to the polling place must have changes in level of  $\frac{1}{4}$  inch or less, or  $\frac{1}{2}$  inch or less if beveled.
- **Floors** in polling places must be level with **no thick mats or carpets** that could trip a person or block a wheelchair. **Note: the maximum thickness of a mat or carpet is established by the ADA at  $\frac{1}{2}$  inch.**

## VOTING BOOTHS

RSA 658:9, III states-

*"...each polling place shall have one voting booth which is easily accessible to elderly persons and to persons with physical disabilities. Each booth shall have 3 sides enclosed, one side in front to open and shut by a door swinging outward or to be enclosed with a curtain. Each side of the booths shall be not less than 6 feet high. The booth shall be between 36 and 40 inches wide at its front door, between 60 and 66 inches deep, and between 36 and 40 inches wide along the back wall. The door or curtain shall extend to within 2 feet of the floor and shall be closed while the voter is marking his ballot. Each booth shall be well lighted and shall contain a shelf between 12 and 15 inches wide running the width of the booth at a height of between 30 and 32 inches which shall be convenient for writing with at least 28 inches of unobstructed space from the floor to the bottom of the shelf."*

In order to satisfy all of the requirements for an **accessible voting booth-**

- There must be at least **1 accessible voting booth.**
- Every accessible **voting booth** must have **3 sides enclosed** and **be well-lighted.**
- Every **accessible voting booth** must have a **front enclosed by a curtain** or a **door that swings outward.** The door or curtain must extend to within **2 feet** of the floor.
- The **minimum dimensions** are:
  - not less than **72 inches high**
  - between **36 & 40 inches wide** at its **front and back.**
  - between **60 & 66 inches deep.**
- Every accessible voting booth must contain a **shelf** that:

- is the **width** of the booth.
- is **12 to 15 inches deep.**
- is **30 to 32 inches high.**
- has at least **28 inches** of unobstructed space from the **floor** to the **shelf bottom** for leg clearance.

See figures 12 & 13

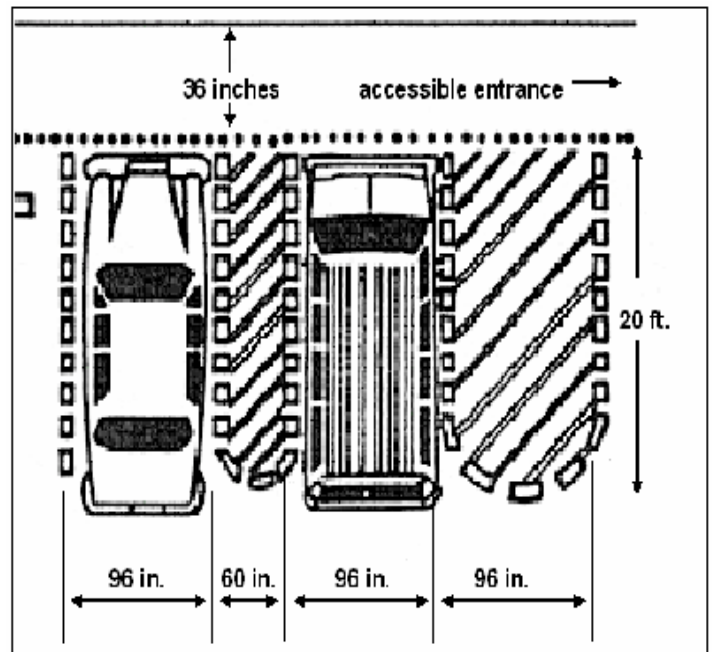


Figure 1.

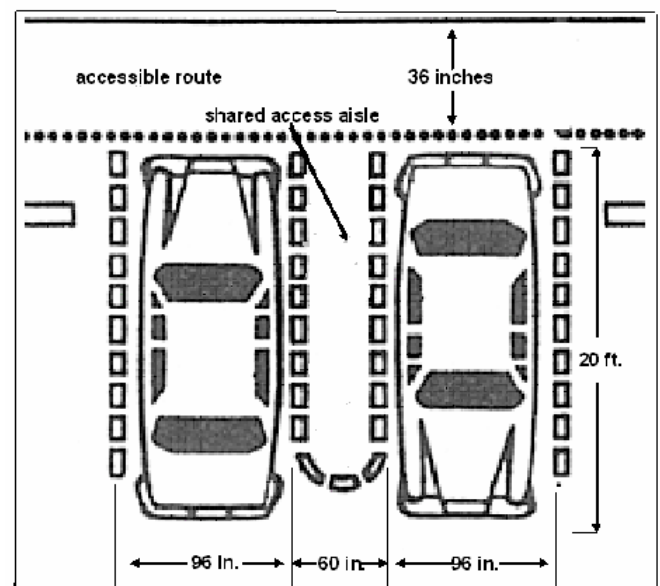


Figure 2.

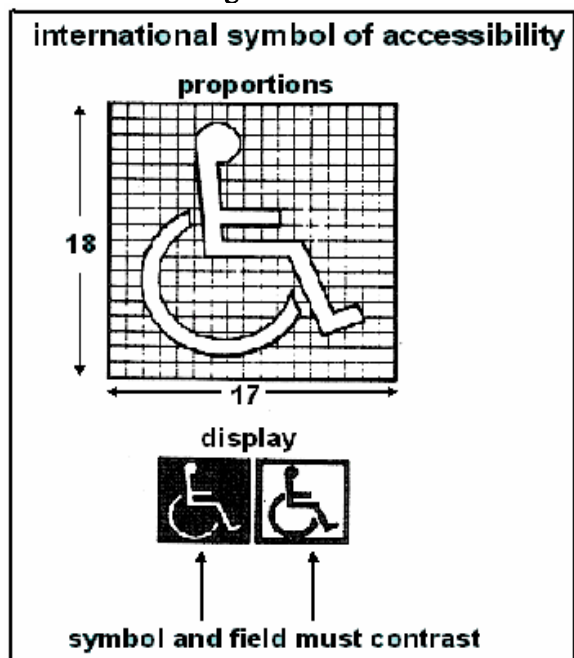


Figure 3.

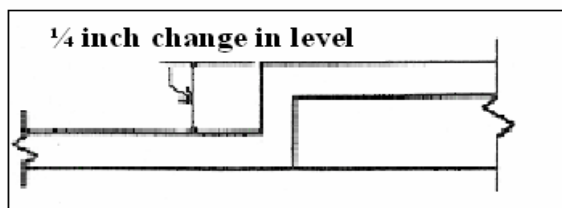


Figure 4.

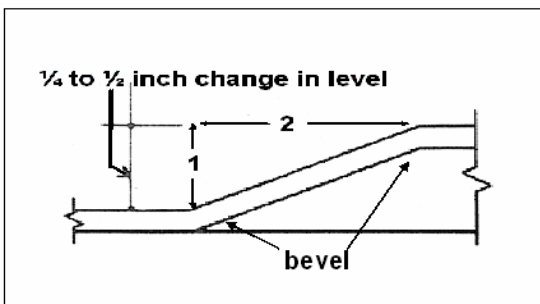


Figure 5.

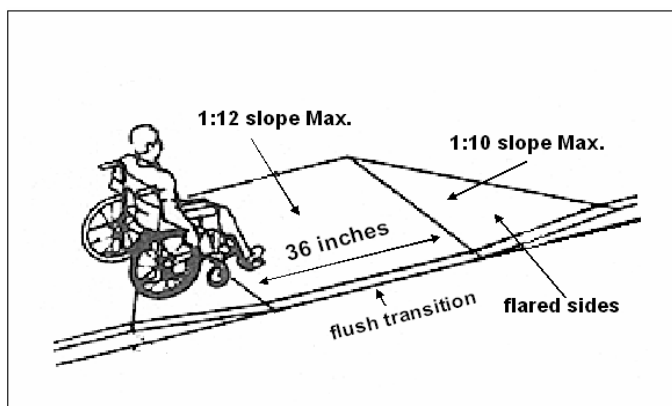


Figure 6.

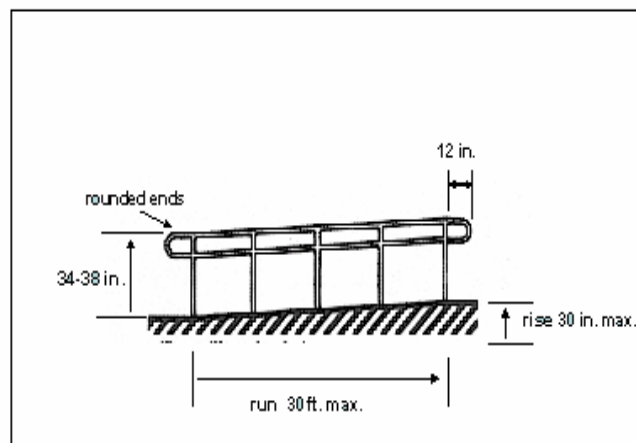


Figure 7.

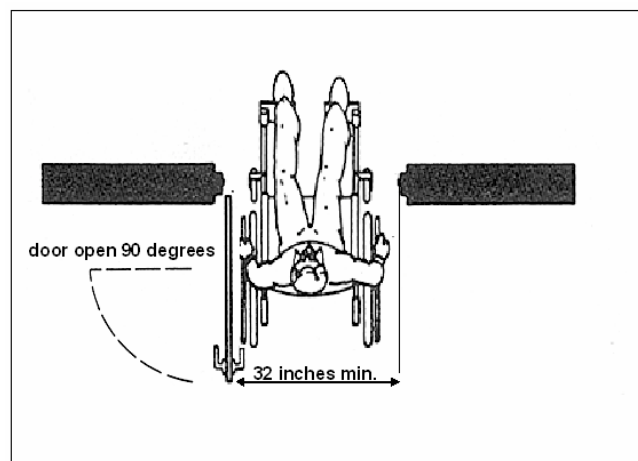


Figure 8.

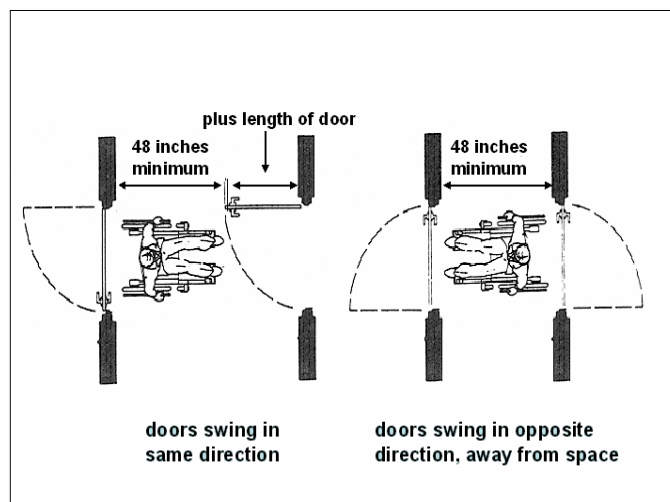


Figure 9.

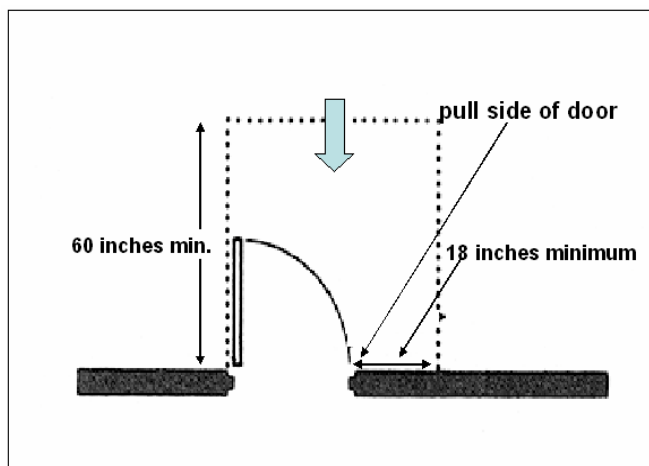


Figure 10.

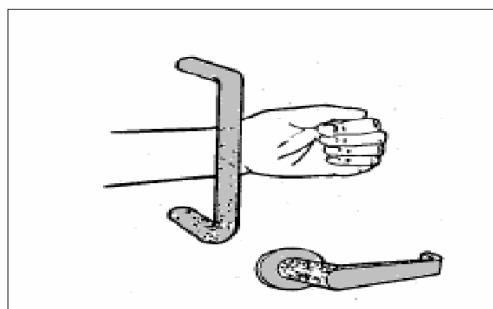


Figure 11.

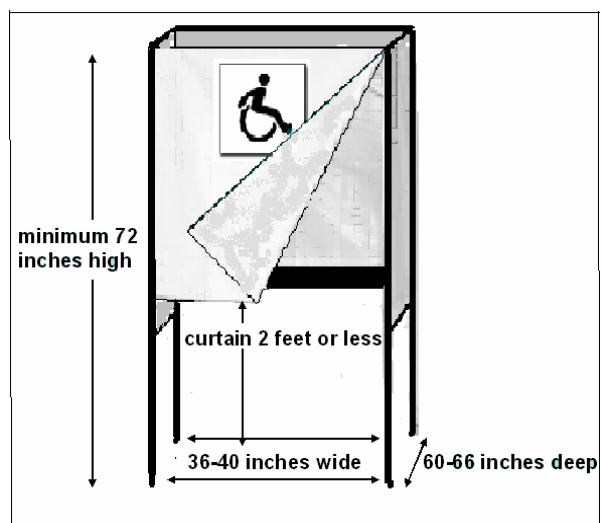


Figure 12.

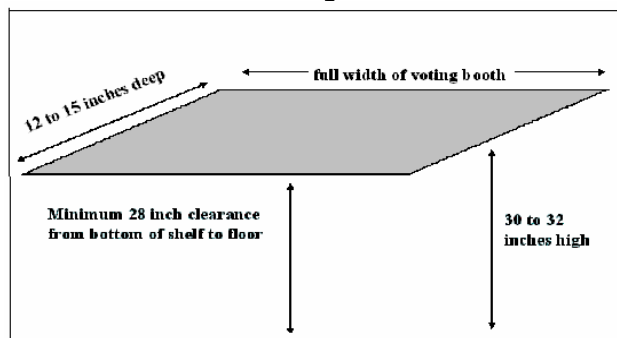


Figure 13.



## **XIII. CHALLENGES**

### **WHO HAS THE RIGHT TO CHALLENGE A VOTER?**

Any other voter registered in the town or ward, election officials, challengers appointed by the political committees or challengers appointed by the Attorney General. RSA 659:27; RSA 666:4–5. Challengers from a political party must have a statement signed by the chair of the committee appointing them. Challengers appointed by the Attorney General must also have a statement signed by the Attorney General.

### **WHEN CAN CHALLENGES OCCUR?**

Usually a challenge is made at the time when the voter is at the check-in table and is being given his or her ballot, however, a challenge can be made up until the moment when the ballot has been dropped into the ballot box or fed into the vote counting machine.

### **HOW DOES SOMEONE CHALLENGE ANOTHER VOTER?**

Any legal voter can challenge the validity of another voter, but the challenge must be in writing. See model challenge form at page 167.

### **CHALLENGERS AT THE POLLING PLACE.**

Any member of the public has a right to observe the conduct of an election from outside the rail. The public trust in elections, sometimes referred to as the legitimacy of elections, relies in part on elections being conducted in the open. These observers do not have any special legal status. In contrast, challengers appointed by a state political party or the Attorney General do have a special legal status.

Moderators should ensure that the poll and rail are set up in such a manner that party challengers and any other interested member of the public can see and hear people check in to vote. RSA 666:4. The Moderator may ask a challenger to present the appropriate signed statement if he or she is from a political committee or the Attorney General's Office.

### **CAN CHALLENGERS KEEP TRACK OF WHO VOTED AND REPORT THIS TO CAMPAIGNS DURING THE DAY?**

Yes. The statutes recognize challengers for the purpose of allowing the political parties to designate a person to challenge persons seeking to vote who they believe should not be allowed to vote. The public nature of the election process, however, allows anyone who so desires to monitor people checking in to vote, keeping track on his or her own who has voted, and using this information in any legal manner.

Campaigns will identify voters who are likely to vote for their candidate(s) and will use the process described above to learn who actually showed up at the polls so that they can contact those who do not show up and encourage them to do so.

Individuals conducting this type of activity may seek more direct access to the checklist, to read off who has voted, or may ask to have names repeated more than once after a person announces his or her name for the ballot clerks. Moderators should establish and enforce a uniform policy regarding such requests. While appointed challengers have a right to stand where they can see and hear each voter check in, they do not have a right to disrupt the polling place. Generally, challengers have no right to stop voters until the voter is in line to get a ballot or after they have checked in. Challengers have a right to have the voter announce his or her name aloud and for the ballot clerks to repeat the name two times, but otherwise they have no right to further announcement of the voter's identity.

### **WHAT IS A PARTY POLL WATCHER?**

Challengers appointed by a party to work at a polling place are sometimes, incorrectly, referred to as poll watchers.

### **ARE THERE SPECIFIC REASONS FOR A CHALLENGE?**

Yes. Voters may be challenged for the following reasons:

- The person seeking to vote is not the individual whose name he or she has given;

- The person seeking to vote has already voted in the election;
- The person seeking to vote is disqualified as a voter by conviction of a willful violation of the election laws;
- The person seeking to vote is under 18 years of age;
- The person seeking to vote is not a United States Citizen;
- The person seeking to vote is not domiciled in the town or ward where he or she is seeking to vote;
- The person seeking to vote is a convicted felon who is currently sentenced to incarceration (would apply to a prisoner on work release or to an escapee);
- In a primary, the voter is not a declared member of the party he claims to be.

**WHAT IS THE PROCEDURE IF A VOTER IS CHALLENGED?** The moderator shall not receive the vote of the person challenged until the challenged voter signs and gives to the moderator a signed Challenged Voter Affidavit. Challenged voter forms are prepared and distributed by the Secretary of State. See sample at page 133.

The affidavit must be sworn before the moderator, town/city clerk, selectmen, or supervisor of the checklist. If the affidavit is properly signed and sworn to, then the moderator should allow the individual to vote. In 2006 House Bill 391 removed the provision in RSA 659:30 which permitted “any person authorized by law to administer oaths” from the list of persons who are authorized to take an oath or affirmation for challenged voter, citizenship, or domicile affidavits. Any affidavit required by the election statutes must now be sworn or affirmed to before an election official. RSA 659:30.

The ballot of a voter challenged in person is not marked. The ballots of challenged absentee voters are marked. See discussion of challenges to absentee voters below.

The clerk must keep a record of all challenges with the name and address of voters completing the affidavits, the name of the person challenging and the reason for the challenge. RSA 659:27–33. If the ballot is absentee, the clerk shall enter this information in ElectionNet, (go to Elections - Absentee Ballots – Maintain Absentee Ballot) by selecting the reasons from the appropriate dropdown, and identifying the challenger.

The moderator has a duty to report violations of the election laws to the Attorney General’s Office. RSA 659:45. If it is determined that the challenge is well grounded, that is a determination that the person who was seeking to vote violated the wrongful voting statute, therefore, the matter should be reported to the Attorney General’s Office. Violations discovered on election day should be reported immediately to 866-868-3703. A written report on all violations will be required. Reports should be mailed to: Office of the Attorney General, 33 Capitol Street, Concord, New Hampshire 03301.

The supervisors of the checklist have the responsibility for determining whether a particular person is qualified to register and vote. The moderator should defer the question of a challenged individual’s qualifications as a voter to the supervisors of the checklist.

Generally, if a person properly completes and swears or affirms a challenged voter affidavit the person should be allowed to vote.

**PRESERVATION OF CHALLENGES.** The moderator at the end of the evening will turn all challenged voter affidavits over to the town or city clerk who shall preserve the information for at least 1 year following the date of the election. If the election is contested, then the affidavits shall be retained by the town/city clerk until the contest is settled and all appeal periods have expired or for at least 1 year, whichever is longer. RSA 659:33, RSA 659:103.

**CHALLENGED ABSENTEE BALLOTS.** Absentee ballots are subject to challenge after the moderator publicly announces the absentee

voter's name, but not after the ballot is removed from the envelope.

The challenger must state the reason for the challenge and the moderator shall write on the affidavit envelope containing the ballot the word "Challenged" and the name and address of the person making the challenge and the reason. The moderator may require the challenger to make the challenge in writing and may attached the voter challenge form to envelope.

The moderator shall number each challenged envelope, i.e. challenge #1, etc. The moderator shall then determine if the challenge is well grounded.

If YES - the moderator does not open the envelope, but shall preserve it with the other ballots cast at the election.

If NO - the moderator shall open the affidavit envelope, so that the affidavit is not destroyed and proceeds first to mark on the reverse side of the folded ballot the corresponding challenge number as marked on the envelope. Then the moderator will process the ballot like all the other ballots.  
RSA 659:51.

## **XIV. SAME DAY REGISTRATION**

### **SAMPLE PROCEDURE GUIDE FOR USE AT THE POLLING PLACE**

**REQUIREMENTS.** Individuals must be 18 years of age or older and must present proof of identity, age, domicile, and citizenship or complete an affidavit of age and/or domicile at the time of registration.

#### **PROCEDURE.**

1. Applicant for registration goes to the supervisors of the checklist.
2. Supervisors check to ensure the individual is not already registered and on the checklist.
3. If the individual is already registered to vote, but is not in the correct voting place, the supervisor will direct the individual to the correct town or ward
4. Applicant presents proof of qualification as a voter for that polling place or completes and swears to/affirms necessary affidavits.
5. Either the individual or supervisor fills out a voter registration form by printing legibly, with the voter signing the bottom of the registration form.
6. Once the registration form is completed the supervisor directs the voter to the ballot clerk and notifies the ballot clerk the individual is now a registered voter, advising which party he or she is affiliated with, if it is a primary election. Larger towns and cities may want to adopt a form to be signed by the supervisor that the newly registered voter can carry to the ballot clerk as evidence that he or she is registered.
7. When the voter comes to the check-in list area, the election official will take the information from the supervisor or the

form and record the voter's name, address, and party affiliation onto the checklist or a separate list of new registrants that supplements the checklist.

8. If the town or city does not use a vote counting machine, upon recording the data, the ballot clerk will return the form to the voter and instruct the voter to hold onto this form until he or she reaches the out-list area.
9. If the voter is undeclared, on primary day the ballot clerk will record on the checklist, the party the voter chooses to affiliate with.
10. The ballot clerk will determine whether there is an available voting booth. As soon as a voting booth is available, the clerk will hand the voter the correct ballot(s). If the town or city uses a ballot counting machine, the clerk will also ensure a privacy folder is available to the voter. The voter will then proceed to vote.
11. In towns or cities that do not use ballot counting machines, when the voter reaches the out-list area, the voter will hand the form to the election official who will record the pertinent information onto the out checklist or a separate list of new registrants that supplements the checklist.
12. In ballot box towns, the voter will then hand the moderator the ballot and the moderator will drop the ballot into the ballot box. In ballot counting machine towns, the voter, under the supervision of the moderator, will feed the ballot into the machine by holding the sides of the privacy folder while feeding the tongue of the ballot that sticks out of the envelope into the machine.
13. On primary day, those voters who had not declared an affiliation with any party prior to primary day may sign a list of undeclared voters requesting that he or

she be returned to unaffiliated status on the checklist. ElectionNet will print a list of undeclared voters with a signature line to change party affiliation and barcodes. This list will make it quick and easy for the supervisors to enter party change information into the ElectionNet system. The list should be positioned near the checkout table or beyond the ballot counting machine with clear signs explaining its purpose. The list must be turned into the supervisors at the end of the polling hours. RSA 654:34, II

14. People who are already registered to vote, regardless of whether they have previously declared an affiliation with a political party may not declare an affiliation or change their affiliation between the first Wednesday in June and the day before the state primary election. RSA 654:34, IV.. A voter who has declared an affiliation, therefore, must change that affiliation before the first Wednesday in June or they are limited to voting in the primary of the party with which they are affiliated. They can change party affiliation on primary day, but if they do so they are not allowed to vote in the primary in either their old party or their new party. RSA 654:34.

## **XV. REMOVAL OF NAMES FROM THE CHECKLIST**

**REMOVAL FROM THE CHECKLIST.** The supervisors shall send notices by mail to the last known address of the person whose name is being considered for removal, stating the reason for removal. Such notice shall also state the time and place at which the Board of Supervisors shall meet to consider the removal of that person's name. The date shall be at least 30 days after the supervisors send notice. RSA 654:38; RSA 654:39.

Supervisors of the checklist are obligated to identify the physical address of each voter and ensure that it is in the jurisdiction in which the voter is registered. When supervisors have reason to believe a voter has moved out of the jurisdiction, the following represent justifiable reasons for sending a 30-day letter:

- (a) A voter appears to be living in a single family home where others have moved into and registered to vote.
- (b) Supervisors have heard that the voter has moved out of town,
- (c) Supervisors cannot identify a physical address for the voter.

The person whose name is being considered for removal shall have a chance, either in person or in writing by mail or messenger, to give the reasons why his or her name should be left on the checklist. The supervisors shall not remove a person's name from the checklist until after the completion of the written or oral statement. The supervisors shall keep records as proof of compliance with the notice requirement. RSA 654:44. See sample notice letter at page 163.

**REPORTS OF DEATH.** When an official notice of death of any person(s) 18 years or older and who resided in the town or city of filing is received by the town or city clerk, that clerk shall notify the supervisors of the death(s). Alternately, the supervisors of the checklist may receive notice of death in the System Reminders screen in ElectionNet. The supervisors shall examine the checklist and, if the name of said deceased person

appears thereon, it shall be removed prior to the next election. RSA 654:37.

**REPORTS OF TRANSFER.** If the supervisors receive notice of a transfer from another board of supervisors they shall remove that name from the checklist at the next session for the correction of the checklist. The notice shall be retained for at least one year as proof of removal of that name. When the voter registers in another New Hampshire town or ward, this information is maintained automatically in ElectionNet. RSA 654:36. It is helpful for clerks in larger towns and cities which have multiple wards, if the clerk of the new residence indicates the voter's previous street address on the voter registration form.

**NOTICE OF PERMANENT CHANGE OF ADDRESS FROM THE UNITED STATES POST OFFICE OR DEPARTMENT OF SAFETY.** Supervisors shall also either remove a person's name from the checklist or send the person a 30 day notice letter if notice is received from the United States Post Office, the Department of Safety, directly or through the ElectionNet that the person has permanently moved from the town or ward where he or she is registered to vote. The authority to remove a voter based on that person telling the Post Office or the Department of Safety that they have moved was enacted by the Legislature in 2006. RSA 654:36-b provides:

*If the supervisors of the checklist receive a report from the United States Postal Service or the department of safety directly or as communicated by the secretary of state through the centralized voter registration database that a voter has permanently changed his or her address to another town, city, or state, they shall strike that name from the checklist at the next session for the correction of the checklist. As an alternative, the supervisors of the checklist may first send a 30-day notice letter and then shall remove the name from the checklist if the voter does not respond to that notice.*

Mail sent to a voter at the mailing address the voter last provided which is returned by the United States Post Office indicating that the person has moved should trigger removal of the

person's name from the checklist. The Secretary of State will be obtaining a list of people in the State who have moved from the United States Post Office and will be sending notice of those moves in the ElectionNet Statewide Voter Registration Database system. If the Supervisors have reason to believe the notice is in error, then a 30 day letter should be sent to the voter before removal of the voter's name from the checklist.

**NATIONAL VOTER REGISTRATION ACT.** With the implementation of the National Voter Registration Act (motor voter law), town and city clerks are receiving notices of transfer from several states. If a person is a part-time resident of another State, but has signed a voter application in that State and the report of transfer is received, you must remove that name from the checklist.

If the individual did not intend to have his or her name removed from the New Hampshire checklist, he must sign a new voter application upon his or her return to New Hampshire.

**VERIFICATION OF CHECKLIST.** The supervisors of the checklist shall verify the checklist:

- On petition of 50 registered voters or 5% of the registered voters, which ever is less, subject to approval after a public hearing by the Ballot Law Commission.
- On petition of a majority of the Board of Supervisors filed with the Secretary of State no later than the fifth Friday after a state election, subject to approval after a public hearing by the Ballot Law Commission.
- In 2011 and once every ten years thereafter.

RSA 654:38; RSA 654:39. The procedure for verification of the checklist is further described in RSA 654:38.

**REQUEST TO CORRECT THE CHECKLIST.** Any person can at any time submit an application for correction of the checklist to the supervisors for their consideration at their next meeting. This, in effect, allows anyone who believes another persons name is illegally on the

checklist to report this to the supervisors. The supervisors should investigate and if they determine it is warranted, send a notice of removal letter to the person. This will require the person to affirm their qualifications as a voter. RSA 654:36-a; RSA 654:28.

In 2006, the Legislature enacted a new statute, RSA 654:36-a, which establishes the procedure for processing a request to correct the checklist:

*I. A supervisor of the checklist, the town or city clerk, or any other person, may submit a request for correction of the checklist to the supervisors of the checklist or to the town or city clerk based upon evidence that a person listed on the checklist is not qualified as a voter in the town or ward. The clerk shall forward requests for correction of the checklist to the supervisors of the checklist. At the next session of the supervisors, they shall examine the requests and determine whether or not it is more likely than not that the person's qualifications are in doubt.*

*II. If the supervisors of the checklist determine that it is more likely than not that the person's qualifications are in doubt, they shall send a notice to the person and afford the person at least 30 days to provide proof of his or her qualifications. If the person fails to respond to the 30-day notice or responds but fails to provide proof that establishes that it is more likely than not that the person is qualified to vote in the town or ward, the person's name shall be removed from the checklist.*

This new law requires that a request to remove a person from the checklist must be based on evidence. The Supervisors of the checklist must evaluate whether, if true, the information provided in the request would make the person listed in the request disqualified as a voter. The Supervisors must determine if the evidence provided constitutes reasonable evidence. For example, a letter stating "please remove the following people from the checklist" and listing one or more names does not constitute evidence that these people are no longer qualified as voters. Similarly a letter stating "please remove John Doe from the checklist because I think he might have moved," does not constitute evidence, it merely states an unsupported suspicion. But, a letter stating "please remove John Doe from the checklist, he used to be my neighbor and he moved to Florida in June" does state evidence. If

a reasonable person reading the request for correction of the checklist would conclude that if found true the evidence in the request would prove the person was no longer qualified as a voter, the thirty day notice letter must be sent.

**SUPERIOR COURT.** Any citizen may bring a complaint before the Superior Court if they believe their name or the name of some other citizen is illegally placed on the checklist or is illegally being kept off the checklist. RSA 654:42.

**NO PHYSICAL (RESIDENCE) ADDRESS INFORMATION ON FILE.** Supervisors of the checklist have a legal obligation to ensure that every voter has a residence in the town or city ward in which they are registered to vote, or is covered by a specific exception in the law. If there is no physical (residence) address for a registered voter on file, supervisors should check available records, including tax records and nearby nursing homes, to find the missing information on the voter.

RSA 659:13, revised in 2003, requires that ballot clerks should “state the address listed on the checklist for the voter, and ask if the address is correct” – before providing a ballot to the voter on election day. This is an opportunity to update address information in voter registration files. Supervisors should re-check the checklists for address updates since active voters should have provided ballot clerks with such information on every election day since 2003.

If the voter has indicated a mailing address that does not correspond to their physical location, supervisors are encouraged to send a 30-day letter to the mailing address requesting the voter’s physical (residence) address. If there is no address provided and the above methods do not produce an address, towns may elect to send a 30-day letter addressed to “General Delivery” in that town, and remove the individual from the checklist if the letter is returned by the U.S. Postal Service as undeliverable.

Until supervisors have determined the physical (residence) address information, they should select a street named “NO ADDRESS” from the drop down list of street names on the Add/Change

Voter screen of the Voter Registration module in ElectionNet.

If “NO ADDRESS” is not in the dropdown list of streets, create “NO ADDRESS” in the “Maintain Streets” activity, with a range for each ward, as required.

The appearance of this dummy data will serve as a heads-up, indicating that further work must be done to find this missing information.

In the Add/Change Voter screen, check the box “INCOMPLETE DATA” and send a follow-up letter.

**NOTICE OF DUPLICATE VOTER.** The creation of a statewide voter registration system ensures that voters who have moved will sometimes appear more than once in the system. The state will issue a list of possible duplicates to each town or city that has them. Supervisors of the checklist have a legal obligation to resolve duplicates before an election.

If the supervisors of the checklist receive a notice of duplicate voter from the state or other jurisdiction, they should check their records, looking for information that would help identify whether it is the same voter, and when and if the voter might have moved.

Once they have identified that it is likely to be the same voter, they should refer to the registration date in ElectionNet and the paper record to attempt to determine which town the voter is most likely to be registered in. It is reasonable to conclude that the most recent registration is the valid registration. Then, the supervisors or their staff should contact the supervisors or town clerk in the other jurisdiction where the voter is registered and resolve which jurisdiction the voter should be in. The supervisor or designee of the jurisdiction that should have the registered voter should log into ElectionNet, select Duplicate Voter, and use the “merge voter” function to merge both records. The duplicate voter record must be removed before it can be merged.



## XVI. ELECTIONEERING

The moderator is responsible for ensuring that illegal electioneering does not occur at the polling place. RSA 659:43; RSA 659:44.

The moderator is responsible for establishing a ten-foot-wide no-electioneering zone from the entrance door(s) of the polling place as far into the driveway/parking area as he or she determines appropriate.

Towns may enact local electioneering bylaws that impose additional restrictions. RSA 31:41-c. Such bylaws must be posted at the polling place at least 72 hours in advance of any town election.

The Moderator also is made responsible for areas leading from the building entrance door to the room where voting occurs and that room itself.

The New Hampshire Constitution, Part 2, Article 32, RSA 659:9, and RSA 659:43 makes the Moderator responsible for ensuring that voting is conducted in accordance with the law and grants the Moderator substantial authority and discretion for that purpose.

The Attorney General's Office reports that a common complaint is that activities, other than voting, occurring within the building where voting is taking place constitute illegal electioneering. It is strongly recommended that voters have a path starting in the parking lot and leading to and from the railed-in voting area which they can pass through without having to go around or avoid other activities. This path should be free from both electioneering activities and civic or social activities.

There is a longstanding practice in New Hampshire of allowing civic and social activities to occur within the building and room where voting is conducted. Many moderators allow bake sales, meals for election workers, public displays by 4-H or scouts, and/or public information displays on issues not before the voters at the election, to be conducted in the room where voting occurs.

Townspople, town officials, the media and others often congregate in the public area outside the rail to observe the voting process, discuss current events and socialize.

Particularly during elections that occur during the cold season or on days with inclement weather, Moderators often will allow even those people actively involved in electioneering outside the building to come into the room where voting is occurring to warm up in the public areas outside the rail. Moderators must require that signs and other electioneering displays be left outside.

These practices are not prohibited by law, but the Moderator has a responsibility to ensure that these activities do not have the effect of electioneering or of discouraging voting.

The moderator shall not allow such activities in the path into and out of the railed voting area. A voter must be able to come to the polling place, cast his or her vote, and leave without having to avoid or turn away from those involved in these activities.

Ideally, all such activities would be located away from the primary path in and out of the voting area such that a voter has a choice of going to the bake sale or girl scout cookie table or of joining the discussion around the coffee table, but also can exit the polling place without doing so.

Moderators should exercise caution when allowing any kind of activity that involves public education or displays of information on issues of public interest/concern. Particular caution must be exercised if a moderator allows petition or letter signing drives to occur in the room where voting occurs. The best practice is not to allow such activities. Exceptions might exist, however, most such activities are properly prohibited pursuant to the electioneering statutes. RSA 659:43; RSA 659:44.

Moderators must ensure that the noise level is kept low in the polling place. Voters must announce their names to the poll workers who staff the in and out tables, voters registering on election day must be able to communicate with

the supervisors, and voters in the booths should not be distracted.

Even where activities such as those described above are not explicitly prohibited, often the participants are local residents who are politically active in the community and who are therefore associated with particular candidates or issues coming before the voters. The association between these individuals, particularly if they are candidates on the ballot, and the issues they are advocating for often will create the appearance of electioneering. All such activities should be allowed to occur only in the zone outside the building where electioneering is permitted or in a room separate from the room used for voting or walking to and from the building entrance. The best practice is not to allow any form of activity that is political in nature inside the building.

**Town Business** It is commonplace for a voter, upon spotting a Selectman or other town official working at the polling place, to want to discuss town business. Public officials who are not performing election officer duties should be encouraged to move to the public areas outside the rail. Public officials who are performing election officer duties have an obligation to avoid discussions that address the pros or cons of any candidate or question before the voters. The appearance of impropriety can be avoided by promptly moving even the most innocent conversations away from the railed in voting area.

## XVII. WRONGFUL VOTING & VOTING FRAUD

RSA 659:34, sets forth the consequences of fraud or lying on the voter registration form or on affidavits used to become registered to vote or to vote. The registration and affidavit forms contain a short restatement of the penalties for wrongful voting. This statute authorizes the Attorney General to issue civil penalties under certain circumstances where there is evidence of voter fraud. A person convicted of criminal voting fraud can be fined up to \$2000 and be sent to jail for up to one year by a court. The Attorney General can impose a civil penalty up to \$5000 on anyone who commits voting fraud.

### *RSA 659:34 Wrongful Voting; Penalties for Voter Fraud.*

*I. A person is subject to a civil penalty not to exceed \$5,000 if such person:*

- (a) When registering to vote; when obtaining an official ballot; or when casting a vote by official ballot, makes a false material statement regarding his or her qualifications as a voter to an election officer or submits a voter registration form, an election day registration affidavit, a citizenship affidavit, a domicile affidavit, or an absentee registration affidavit containing false material information regarding his or her qualifications as a voter;*
- (b) Votes more than once for any office or measure;*
- (c) Applies for a ballot in a name other than his or her own;*
- (d) Applies for a ballot in his or her own name after he or she has voted once;*
- (e) Votes for any office or measure at an election if such person is not qualified to vote as provided in RSA 654; or*
- (f) Gives a false name or answer if under examination as to his or her qualifications as a voter before the Board of Supervisors of the checklist or moderator.*

*II. A person is guilty of a class B felony if, at any election, such person purposefully or knowingly commits any of the acts listed in paragraph I(b). A person is guilty of a class A misdemeanor if, at any elections, such person purposefully or knowingly commits any of the other acts listed in paragraph I.*

*III. The attorney general is authorized to impose a civil penalty under paragraph I.*

*(a) The attorney general may impose a civil penalty by providing written notice to the person:*

*(1) Setting forth the date, facts, and nature of each act or omission which makes the person liable to pay a civil penalty;*

*(2) Specifically identifying the particular provision or provisions of the law involved in each violation; and*

*(3) Advising the person of each penalty that the attorney general imposes and its amount.*

*(b) The written notice shall be served in hand or sent by registered or certified mail to the last known address of such person. The person shall have 30 days to pay any civil penalty assessed under this section to the secretary of state for deposit into the general fund.*

*IV. The decision of the attorney general to impose a civil penalty may be appealed to superior court. An appeal must be filed within 30 days of the date on which the person received it.*

*V. The attorney general is authorized to institute a civil action to collect a penalty imposed pursuant to this section. The attorney general shall have the exclusive power to compromise, mitigate, or remit such civil penalties.*

In 2006, the Legislature established the new offense of Voting in More than One State.

“A person is guilty of a class B felony if, at any election, such person knowingly checks in at the checklist and casts a New Hampshire ballot on which one or more federal or statewide offices or statewide questions are listed if the person also casts a ballot in the same election year in any other election held in any other state or territory of the United States where one or more federal or statewide offices or statewide questions are listed. For federal or statewide offices and statewide questions, neither the candidates nor the questions need be the same in both jurisdictions for a violation to occur. . . .” RSA 659:34-a.

## ELECTIONEERING BY PUBLIC EMPLOYEES

The 2003 Legislature established new misdemeanor election law offenses. The first prevents interfering with communications equipment, in essence making it a misdemeanor to block telephone lines or internet sites. The second prohibits certain work time and workplace electioneering activities by certain public employees.

*RSA 659:40-a, Interference With Communications. Any person who, on the day of any election, knowingly blocks, or solicits another person to block, the access of any candidate or committee to the candidate's or the committee's communications equipment or services with the intent of interfering with campaign activity shall be guilty of a class A misdemeanor.*

*RSA 659:44-a Electioneering by Public Employees. No public employee, as defined in RSA 273-A:1, IX, shall electioneer while in the performance of his or her official duties or use government property, including, but not limited to, telephones, facsimile machines, vehicles, and computers, for electioneering. For the purposes of this section, "electioneer" means to act in any way specifically designed to influence the vote of a voter on any question or office. Any person who violates this section shall be guilty of a misdemeanor.*

RSA 273-A:1, XI defines public employee as “any person employed by a public employer except: (a) Persons elected by popular vote; (b) Persons appointed to office by the chief executive or legislative body of the public employer; (c) Persons whose duties imply a confidential relationship to the public employer; or (d) Persons in a probationary or temporary status or employed seasonably, irregularly, or on call. . . .”

RSA 273-A:1, X defines a public employer to include the state and any political subdivision thereof.

Local election officials who are responsible for the use of government property and who do not fall within the listed exceptions or who have employees who do not fall within an exception should educate their staff regarding these new limitations. It may be appropriate to include a reference to this statute in employee manuals or handbooks.

RSA 666:7-a makes it a misdemeanor to place a telephone call during which the person placing the phone call falsely represents himself or herself as a candidate for office.

## CRIMINAL CONSEQUENCES FOR MISCONDUCT

Election officials who knowingly engage in misconduct such as:

- Receiving and counting any illegal vote;
- Omitting to receive or count a legal vote;
- Illegally removing or adding votes to vote totals; or who;
- Otherwise knowingly fails to perform a duty imposed by the election laws;
- Knowingly performs such duty in a way as to hinder the objects thereof; or
- Disclosing private information from ElectionNet, the central voter registration system.

may be convicted of a misdemeanor. RSA 666:2; RSA 666:3. Other consequences are set forth in particular statutes. Misconduct by election officials in some cases is a felony. Any person guilty of an offense against any provision of the laws relating to elections for which no penalty is specified shall be guilty of a violation. RSA 666:1. A violation is punishable by a fine of up to \$1000. RSA 652:1.

## **ADMINISTRATIVE COMPLAINT PROCEDURES**

The Attorney General's Office is responsible for enforcing the election laws. RSA 7:6-c, RSA 664:18 and RSA 666:8. The Help America Vote Act requires formal administrative complaint procedure.

A complaint can be filed with the Attorney General and the Attorney General's Office is the authority for the resolution of complaints of federal voting law violations, pursuant to the Help America Vote Act of 2002. The attorney general may adopt administrative rules under RSA 541-A to implement the complaint resolution procedures. The ballot law commission is hereby designated as the body providing alternative dispute resolution as required by section 402(a)(2)(1) of the Help America Vote Act of 2002. RSA 666:14.

Election officials and voters are welcome to contact the Attorney General's Office by telephone or e-mail. On or immediately before election day concerns will be addressed promptly on the basis of these informal communications. In most cases a person wishing to make a formal complaint must file a written complaint. A complaint form is available from the Attorney General and can be downloaded from the Attorney General's web site at:

[http://doj.nh.gov/elections/file\\_complaint.html](http://doj.nh.gov/elections/file_complaint.html)

## **XVIII. ELECTION NIGHT RECONCILIATION**

Moderators are obligated to ensure that votes are counted accurately. RSA 659:60. Moderators are strongly encouraged to adopt an election night reconciliation procedure that checks the apparent results of the ballot counting against other known election statistics to ensure that the results are accurate.

It is inherent in the nature of an election night count, particularly at polling places that hand count ballots that even the most careful election officials can make mistakes. Most of the officials conducting the counting will have been working for 12 or more hours before the counting process starts. Often the counting is done under the pressure of the candidates, the public and the press watching and anxiously waiting for the results. Therefore, taking the steps described below to ensure that the count is accurate is necessary.

Each election, a small number of polling places report results which are conspicuously inaccurate. The results report votes for the candidates in a given race that when added together total more than the reported number of ballots used, or more than the total number of voters reported as voting. In most cases, an inquiry by the Secretary of State or a recount disclose a counting or tabulation error. Either mistakes are made when tallying up the counts done by individual teams doing hand counts or errors are made in the manner in which ballots which were machine counted but contain write-in votes are counted.

When election night results are invalid on their face, this diminishes the public's trust in our election system. It often results in a call for a recount. Finding and correcting easily identifiable errors on election night is less work and less expensive than a recount.

A great deal of effort is taken to afford every qualified voter the opportunity to vote quickly and easily. That effort is ineffective unless every vote is accurately counted. Voters deserve the extra effort

that is required to conduct a reconciliation of election night results with other election statistics.

## **BALLOT INVENTORY**

The inventory of ballots is the starting point for the election night reconciliation of ballot counts. The ballot inventory establishes a baseline of how many ballots were used at the election. The moderator and clerk are required to keep track of the ballots made available for use at the election and those actually used. The Return of Votes that must be filed with the Secretary of State requires a report of the number of ballots used.

The Ballot inventory should start with determining the number of ballots received from the Secretary of State ("SOS"). During the counting process, determine the number of ballots produced by the Accessible Voting System ("AVS") the telephone – fax voting system that must be available for use by voters with disabilities.

The number of absentee ballots must be determined. This can be done during the hand count by segregating the ballots or this can be kept track of during the processing of absentee ballots. At elections where federal office only ballots are used, these will always be absentee ballots, the number of these ballots should be kept track of separately. When reconciling the votes cast for federal offices, these federal office only ballots should be included in the calculation of the total number of ballots used at the election. When reconciling the votes cast for state and county offices the number of federal office only absentee ballots must be subtracted from the total number of ballots used.

## **BALLOTS USED**

Determine the total number of ballots used at an election as follows:

Election Day Ballots received from SOS = \_\_\_\_\_  
+ Ballots from IVS \_\_\_\_\_

+ State Absentee Ballots Cast	_____
+ Federal Office only	_____
Absentee Ballots Cast	_____
+ Absentee Ballots/Photocopy ballots	_____
used for election day ballots	_____
- Spoiled Ballots	_____
- Election Day Ballots not used	_____
<b>= Total Ballots Cast at the Election</b>	_____

## COUNTING NUMBER OF VOTERS VOTING

The Return of Votes form requires that the number of voters checked off on the checklist as having voted must be counted and reported.

**HAND COUNT POLLING PLACES.** In a hand count town the check-in checklist should be counted and compared to the check-out checklist to establish the number of voters who voted.

**MACHINE COUNT POLLING PLACES.** In a machine count town the number of voters checked off on the check-in checklist should be compared to the results tape from the ballot counting machine. The total ballots counted reported on the end of the election results tape must be added to the number of ballots that had to be hand counted. Typically a small number of ballots are rejected as not readable by the Accuvote optical scanning machine. These should be put in the side pocket during polling hours and hand counted after the polls closed. These ballots, which are entirely hand counted, are not included by the machine in its report stating the total number of ballots counted. Other ballots which contain write-in votes or which were read by the Accuvote machine as entirely blank will be found in the write-in bin beneath the machine. These ballots are included in the total ballots counted reported by the machine. Do not add them in twice.

The total from the tape plus the number of completely hand counted ballots is a statistic that serves the same function in a machine count town that the check-out checklist serves in a hand count town. This total of ballots should be compared to the number of voters checked off as having voted

on the check-in list to determine the total number of voters who voted.

## TOTAL VOTES COUNTED

The next step in reconciliation is to determine the total votes counted for each contested office or question. To effectively reconcile the election night results it is necessary to count not only votes for candidates in a race but also the number of voters who skip the race, that is abstain (submit a ballot with no candidate marked for that race). A ballot in which the voter overvoted, that is marked two or more candidates for a race where the instruction is to vote for no more than one, should for this purpose be treated as a skipped or abstention. The same applies in a multi-seat office where the voter votes for more than the permissible number of candidates. Because the voter may only vote for the permitted number and it is impossible to determine which candidates the voter preferred most, the ballot is treated as if the voter did not vote for anyone for that office.

**RACES BLANK, SKIPPED, OVERVOTED AND ABSTENTIONS.** In a hand count polling place the counting teams should be instructed to record the number of ballots where the voter skipped or abstained from voting in the race and the number where the voter overvoted. These numbers must be reported along with the total number of votes for each candidate and write-in.

The ballot counting machine automatically records as a "blank" each ballot where the voter skipped the race or abstained or where the voter overvoted. It is necessary to count the abstentions and overvotes only on the ballots that are entirely hand counted. If entirely blank ballots are found in the write-in bin which were improperly marked and can be hand counted, it will be necessary to subtract that ballot from the total blanks reported on the machine tape for every race where a vote is counted for a candidate.

## VOTES CAST FOR AN OFFICE

To determine the total votes cast for an office:

For each office (vote for no more than one):

All votes for first candidate	_____
+ All votes for second candidate	_____
+ All voters for each additional candidate	_____
+ All write in votes	_____
+ All blank/skipped/abstention/ overvote ballots	_____
<b>= Total votes counted for the office</b>	_____

Reconciliation. The election night results are reconciled if each of these statistics are equal for each contested race or question.

<b>Ballots used =</b>	_____
<b>Voters Voting =</b>	_____
<b>Total Votes Counted for the Office/Question</b>	_____

Small differences in the number of ballots used, number of voters voting and the total number of votes counted for an office or question sometimes occur even when counts are accurate due to human error in marking the checklist. Under no circumstances should the total votes counted for an office or question exceed the total number of ballots used or the total number of voters voting. Every effort should be made to resolve any discrepancies of this character. Errors in the other direction, where there are fewer total votes counted than ballots used or voters voting are problematic, but do not create conspicuously invalid results.

If you are certain there is no counting error, declare the final results even if a small difference exists. Occasional human error in checking the checklist as voters check in or in counting large numbers of blank ballots when determining the number of ballots used are unavoidable. Make the existence of that difference part of the record of the results. The difference usually will not be an issue, unless the margin of victory is less than the difference. In that case, a candidate will often request a recount.

## EXPECTED UNDERVOTE

A second approach to reconciling election night results is to compare the total votes counted for each candidate and write in the total number of voters voting/total number of ballots used and access whether the undervote makes sense. At every election a certain number of voters will abstain in certain races, i.e. they will not vote for any candidate. Alternately, they will purposefully or by error vote for too many candidates, an overvote, thereby casting a ballot with the same effect as an abstention.

The rate of such undervoting is reasonably stable for the races at the top of the ballot. At elections where voters are voting for President of the United States, an undervote of  $\frac{1}{2}$  of one percent (.005) is common. Therefore, when reconciling the apparent results at an election where President is being voted for, if your results suggest that more than 3% (.03) of the voters did not vote for President, this is a warning sign. This result is possible, but should prompt the moderator to recheck the results before announcing them. At an election where the Governor is the top candidate on the ballot, the undervoting rate is less constant, but generally should be less than 5% (.05). The same is true for candidates for United States Senate. If the apparent election night results indicate that more than 5% of the voters did not vote for Governor or United States Senator, the moderator should re-check the numbers before announcing the results. The undervote rate for Representative to Congress can average around 4 – 5%. Therefore, results indicating that more than 7% of the voters did not vote in that race should prompt a review of the numbers. The undervote rate for offices below these on the ballot is too unpredictable to be helpful in reconciliation. However, it is sometimes the case that if an error is found regarding a top-of-the-ballot race, for example that the results from a hand count team were omitted from the tally, that error will have affected all the races and questions on the ballot. Checking the undervote for the top of the ballot races is another effective way to identify problems with the tallying.



## **XIX. COMMONLY ASKED ELECTION QUESTIONS**

**WHAT ARE THE VOTING HOURS?** At all state elections the polls must open no later than 11:00 AM and close no earlier than 7:00 PM. RSA 659:4.

**ARE THERE ANY EXCEPTIONS TO THIS LAW?** Yes. Many communities have voted to open the polls at 8:00 AM. If your community was one of those then your polls must open at 8:00 AM and close no earlier than 7:00 PM. These polling hours do not apply to local elections.

**WHO GOVERNS LOCAL POLLING HOURS?** Town meeting hours are set by the selectmen or by a vote of the town. RSA 669:25. City elections are set by the city charter or city council. RSA 669:25.

**WHAT HAPPENS TO VOTERS WHO ARE STANDING IN LINE WHEN THE POLLS CLOSE?** All voters who are standing in line to vote or to register to vote must be allowed to register and/or vote if they are in either line when the polls close.

Polling places must be open to the public to observe voting and vote counting. Some mechanism, other than locking the building, should be used to establish who the last person in line is who arrived in time to be allowed to vote. Moderators may want to have additional staff prepared for this duty or may want to call upon law enforcement officers detailed to the polling place to assist in this task.

**HOW DO YOU GET AN ABSENTEE BALLOT TO SOMEONE WHO IS HOSPITALIZED ON THE DAY OF ELECTION?** Technically there is no State Law which establishes a deadline for applying for an absentee ballot other than the deadline that absentee ballots must be received by 5:00 p.m. on election day. RSA 657:22.

The town or city clerk may deputize someone from her or her office, or take the ballot to the person and then accept receipt of the completed ballot in person. The constitutional right to equal protection may require that if a clerk extends this service to one person but not to a similarly situated person, the clerk must have at least a rational basis for treating the two people differently. Generally, it is recommended that clerks adopt a uniform practice, treating all similarly situated persons equally.

**HOW DO YOU COUNT INDIVIDUAL VOTES ON A STRAIGHT PARTY TICKET?** If a voter marks the straight ticket mark and then marks a specific candidate, of the same or a different party, for a particular office, the mark for the particular office overrides the straight party mark, **as to that office only**. If a voter marks the straight ticket box and then votes for one or more candidates for any specific, multi-candidate office, the straight ticket mark is overridden or not applied to that multi-candidate office. The ballot is counted as one vote for each candidate for that multi-candidate office that was specifically marked. RSA 659:17. The straight ticket vote, however, is still applied to all offices that are not specifically marked by the voter.

This means that if a voter marks the straight ticket for the x party and then for the office of state representative (where the voter is entitled to vote for no more than three) then the voter specifically marks the box or circle adjacent to the names of two candidates for state representative, that ballot should be counted as one vote for each of the two candidates who have marks next to their names. It is correct to interpret the intent of the voter as voting for the two candidates that are marked and skipping or not voting for anyone for the third state representative seat. This is true even if both of the individually marked candidates are from the x party. The straight ticket mark would still apply to all other offices where the voter has made no specific marks. The candidate of the party that was marked with the straight ticket mark must be credited with vote for all offices where the voter did not mark any candidates.

Once a mark is made indicating that the voter is choosing to specifically select the candidate(s) of his or her choice for a particular office, the straight ticket mark is no longer applied to that specific office. The straight ticket mark is applied to all other races where no specific candidate has been marked. RSA 659:17.

## **CERTIFYING NOMINATION PAPERS**

### **WHAT IS THE ROLE OF THE CLERKS IN ACCEPTING NOMINATION PAPERS?**

Clerks may accept nomination papers and forward them to the Board of Supervisors of the checklist. If the papers come in on the last day of filing, they should be delivered directly to the Board of Supervisors of the checklist, or the town clerk should contact the Board of Supervisors as soon as possible. RSA 655:40-43.

### **WHAT IS THE ROLE OF THE CLERKS IN VERIFYING THE INFORMATION ON THE NOMINATION PAPERS?**

Town Clerks have no role in verifying the information, City Clerks may be responsible for verifying information on nomination papers. RSA 655:41.

### **WHAT IS THE ROLE OF THE BOARD OF SUPERVISORS OF THE CHECKLIST IN VERIFYING THE INFORMATION ON THE NOMINATION PAPERS?**

A majority of the supervisors must certify whether each signature is or is not from a registered voter. Supervisors should notify the person who submitted the nomination papers once the verification process is complete. It is the responsibility of the person who submitted the papers, typically the candidate, to pick up the completed forms from the Board of Supervisors, however, the Board of Supervisors can mail the papers back to the appropriate address if the person agrees. RSA 655:41. The Board of Supervisors of the checklist shall certify nomination papers under this section in a timely fashion so that their certification shall be complete for each candidate, together with any objections to the nomination

papers submitted, no later than 5:00 p.m. on the Wednesday 2 weeks before the primary.

### **IS THERE A REQUIREMENT THAT SOMEONE BE AVAILABLE TO ACCEPT THE NOMINATION PAPERS ON THE LAST DAY OF FILING?**

The last day of filing nomination papers with the supervisors of the checklist is by 5:00 p.m. on the Wednesday 5 weeks before the primary. Town and city clerks are not required to be open, but a supervisor of the checklist should be available for drop off. RSA 655:41.

### **SHOULD A NOMINATION PAPER BE CERTIFIED IF THE VOTER IS NOT LISTED AT THE SAME ADDRESS IN THE COMMUNITY AS INDICATED ON THE FORM?**

As long as the supervisors of the checklist are sure that the person is properly registered as a voter in the supervisors' town or ward, they may certify the nomination paper. RSA 655:40-43

## **ABSENTEE BALLOTS**

### **WHEN IS A SPECIAL WRITE-IN ABSENTEE BALLOT USED?**

The special overseas and armed services election write-in ballot is used for overseas citizens and armed services personnel who state they are unable to vote in person or to vote using a regular absentee ballot due to requirements of military service or due to living in isolated areas outside the United States and Canada. RSA 657:10-a

### **WHEN IS AN OFFICIAL OVERSEAS CITIZENS FEDERAL ELECTION ABSENTEE BALLOT USED?**

Whenever an armed services or overseas citizen voter requests a state general election ballot prior to October 1 to be mailed to an address outside the continental United States, he shall be sent an Official Overseas Citizens Federal Election Absentee Ballot. RSA 656:34.

### **WHAT IS A MILITARY HOME OF RECORD?**

For voting purposes, the home of

record is the town in which the person was domiciled when the person entered the service.

**DOES THE CLERK NEED TO VERIFY THE HOME OF RECORD STATUS OF A MILITARY ABSENTEE VOTER?** No.

**DOES A MILITARY ABSENTEE VOTER NEED TO BE ON THE CHECKLIST TO RECEIVE AN ABSENTEE BALLOT?** No. Regardless of whether he or she is previously registered, any person qualified as an armed services voter may vote absentee at any election in the town which was last his or her home. RSA 657:3.

**WHEN DOES THE NAME OF THE MILITARY ABSENTEE VOTER GET ADDED TO THE CHECKLIST?** Upon receipt of a returned envelope containing an armed services or overseas citizen federal election absentee ballot, the clerk of the city or town shall open and retain said envelope and deliver the affidavit envelope to the Board of Supervisors of the checklist. If the appropriate affidavit appearing on the envelope is properly executed it shall be prima facie evidence of the voter's qualifications to become a voter and have his or her name added to the checklist. The Board of Supervisors of the checklist shall return the affidavit envelope unopened to the city or town clerk who shall attach it to the application and retain it until election day. RSA 657:21.

**DOES THE MILITARY HOME OF RECORD STATUS EVER EXPIRE?** Yes. Armed services voters shall have the right to vote absentee in any state election in the town or city in New Hampshire in which they had a domicile immediately prior to such service, even though they no longer maintain a domicile in said town or city and even though their intent to return thereto is uncertain, provided they comply with all other applicable requirements and qualifications of the State and they are not registered to vote in any other state.

**CAN YOU USE THE POSTAGE FREE ENVELOPE FOR CIVILIANS WHO ARE IN REMOTE PLACES?** No, unless the absentee voter is using an FPO or an APO address. If the address to which the voter's ballot is sent is outside the United States or Canada, such papers shall be sent by air mail. RSA 657:15.

**WHEN SHALL ABSENTEE BALLOT PROCESSING BEGIN?** Processing of previously received absentee ballots shall begin at 1:00 PM. Absentee ballots received after 1:00 PM and prior to 5:00 PM shall be processed as soon after receipt as possible. Upon petition of 10 or more voters, processing of absentee ballots will occur after the polls close and before any ballots are counted. Except in this circumstance, do not close the polls when you are processing absentee ballots. RSA 659:49.

**WHEN SHALL ABSENTEE BALLOT COUNTING BEGIN?** Those cities and towns using voting counting machines, should put the ballots into the machine in the same manner as election day voters' ballots. Those cities and towns who hand count ballots can not count the absentee ballots until the polls close. RSA 659:52.

**REPORT ON UNIFORMED SERVICE AND OVERSEAS VOTERS REQUESTS FOR AND VOTING BY ABSENTEE BALLOT.** Clerks must complete a form in ElectionNet for reporting the number of absentee ballots sent to uniformed service and overseas voters, the number of absentee ballots returned, and the number cast for each general election involving federal offices. HAVA requires the Secretary of State to file a statewide report within 90 days after the general election is held. 42 U.S.C. 1973ff-1(c). This report enables the federal government and the states to improve mechanisms to provide absentee ballots to the military. If the information is not completed in ElectionNet, information is not collected and the state report cannot be properly filed with the Federal Election Assistance Commission.

**IF A STATE LIKE CALIFORNIA ALLOWS NON-US CITIZENS TO GET A DRIVER'S LICENSE, SHOULD WE OR MUST WE ACCEPT THAT AS "PROOF OF DOMICILE" AND ALLOW THAT PERSON TO REGISTER TO VOTE.**

A driver's license from another state is presumptive proof of identity, but not of domicile in New Hampshire. Unless you have evidence that contradicts the proof of identity offered by the driver's license, you must accept it as proof of identity. This means the person can then swear or affirm a domicile or citizenship affidavit. Generally you must accept a properly executed affidavit.

RSA 654:12.

**CLARIFY WHETHER THOSE ON PAROLE OR PROBATION CAN VOTE. I DIDN'T THINK THEY COULD VOTE UNTIL SUCH TIME AS THEIR SENTENCE WAS COMPLETED.**

The right to vote or run for office is not affected by conviction of a misdemeanor, unless the crime involves a willful violation of the election law. A person convicted of a felony whose sentence is suspended or who is on parole may vote, but may not seek elected office until their sentence is complete. Only those who are incarcerated for a felony conviction may not vote. A person incarcerated for a misdemeanor may vote by absentee ballot. The only person who should show up to vote who should be denied under the felon disenfranchisement statute would be a prison escapee or an incarcerated felon on work release or home detention. RSA 607-A:2.

**IF A CANDIDATE REQUESTS A HARD COPY OR DISKETTE OF REGISTERED VOTERS, DOES THE LAW NOW LIMIT IT TO VOTER'S NAME, ADDRESS AND PARTY AFFILIATION? WHAT ABOUT MAILING ADDRESSES LIKE PO BOXES?**

A candidate or any other person is entitled to the name, physical address, mailing address, and party

affiliation, if any. The law changed in 2006 to make the mailing address a public record. RSA 654:31-a.

**CAN ANY EFFORTS BE MADE TO MAKE IT EASIER TO REMOVE NAMES FROM CHECKLIST? OUR SUPERVISORS REFUSE TO REMOVE NAMES OF PERSONS WHO HAVE PERMANENTLY MOVED EXCEPT FOR THE 10-YEAR PURGE.**

The law was changed in 2006 to require removal of a person's name from the checklist when notice is received from the United States Post Office or the Department of Safety that the person has notified either agency that he or she has permanently moved from the town or ward where he or she was registered as a voter. In the future ElectionNet will get this information from the United States Post Office and the Department of Safety and provide it to the supervisors. If the supervisors have reason to doubt that the voter has moved, they may send a 30 day letter. Otherwise, the voter's name is removed in the same manner as the name of a voter who has died or who has registered to vote in another jurisdiction.

A name can also be removed from the checklist as part of a purge or in response to a written application for correction of the checklist. A purge can be triggered by the ten year requirement or subject to approval by the Ballot Law Commission by the petition of 50 voters or 5% of registered voters (whichever is less).

In 2006 a provision was added to the law clarifying that anyone with evidence that a person's name is on the checklist who is not lawfully entitled to vote in the community may submit a written application for correction of the checklist to the supervisors. The application should be accompanied with evidence that the person is not qualified (evidence they died, moved out of the town or ward, etc.). If the supervisors find that the evidence presented, if true, raises reasonable doubt about the voter's qualification as a voter, they must send a 30 day

letter. If the voter does not respond with evidence confirming his or her qualifications, the voter must be removed from the checklist. RSA 654:27; RSA 654:28; RSA 654:30.

Supervisors are strongly encouraged to abide by the data conventions described in Frequently Asked Questions supplied in training. These conventions require assigning standard address conventions to all voters. By following these conventions and following up, with 30-day letters if necessary, on any person who does not fall within them, supervisors can make their checklists more accurate and current.

It is the supervisors' job to ensure that the people whose names are on the checklist are eligible to vote. If the supervisors have evidence that a voter no longer lives in the jurisdiction, they should send the person a 30-day letter, and take the person off the checklist if he or she does not respond.

### **WHO DEPOSITS BALLOTS IN THE BOX – MODERATOR OR VOTER? DOES THIS APPLY TO THE VOTING MACHINE?**

If ballots are hand counted, the voter must hand the ballot to the moderator who is responsible for dropping it into the ballot box. The best practice is for the moderator to stand right beside the box, to receive the ballot just above the slot in the ballot box, and to limit his or her handling of the ballot to feeling it to ensure there is only one ballot (the correct number of ballots if more than one is issued to each voter) and then to immediately drop the ballot into the box. In effect the ballot merely passes through the hand of the moderator and there is no question of the moderator seeing how the person voted.

If ballots are counted by a machine, the voter should feed the ballot into the machine. The moderator should stand right beside the ballot counting machine, watch the process, and ensure that only one ballot (the correct number of ballots if more than one is issued to each voter) is fed into the machine by each voter. RSA 659:23.

### **OFTEN, A SON, DAUGHTER OR SPOUSE WILL ASK IF THEY MAY ASSIST AN ELDERLY OR HANDICAPPED VOTER IN THE VOTING BOOTH. TO WHAT EXTENT IS THIS PERMISSIBLE?**

State and federal law are in conflict on who can assist a voter. The best practice is to allow the voter to choose who they want to assist them provided that person is not the voter's employer or union official. RSA 659:20. 42 U.S.C. 1973 aa-6

### **EXIT POLLING: IN WHAT MANNER CAN (OR SHOULD) THIS PRACTICE BE REGULATED AT THE POLLING PLACE?**

No one can obstruct voters as they enter or exit the polling place, and no one can electioneer within the polling place. Otherwise, there are no specific restrictions on exit polling. The same limits should be placed on persons taking exit polls, girl scouts selling cookies, the flower club bake sale, or any non-election activity that is allowed at the building where voting takes place. The best practice is to require anyone involved in any of these activities to set up outside the railed in area and outside the usual and customary path into and out of the polling place. Where an adjacent room is available, that is an ideal place for such activities. New Hampshire Constitution, Part 2, Article 32; RSA 659:9; RSA 659:43; RSA 659:44.

### **IF A PERSON CANNOT FURNISH THE NUMBER OF THEIR HOUSE, CAN WE REFUSE TO ADD THEM TO THE CHECKLIST?**

No, unless you have evidence to establish that they are not living where they say they live. The E911 system and emergency services benefits from the use of house numbers. Therefore, it is appropriate to encourage people to learn their house number. You should not, however, deny them the right to vote if they have failed to do so. RSA 654:12. It is up to the supervisors of the

checklist to select a number on the street that reflects their location on the street and enter it into ElectionNet (SVRS.)

### **HOW DO YOU KNOW A STUDENT HAS NOT FILLED OUT & FILED FOR AN ABSENTEE BALLOT FOR THE TOWN HE CAME FROM?**

Students should be treated like any other person applying for registration or, if already registered, seeking to vote. To become registered the applicant will have to sign, under penalty of voting fraud, the registration form that includes the phrase “and if registering on election day, that I have not voted and will not vote at any other polling place this election.” RSA 654:7 If anyone has evidence that a person has already voted in the election, by absentee ballot or otherwise, they may make a voter challenge with the moderator. After the election, any evidence that a person voted in one town by absentee ballot and in a second in person should be reported to the Attorney General’s Office. In 2006 the legislature added a new statute that makes it a felony to vote in the same election in New Hampshire and in some other state.

### **CAN PEOPLE GET A COPY OF THE CHECKLIST THAT INCLUDES A PERSON’S MAILING ADDRESS?**

Yes. The mailing address is now part of the public record and may be given out. This law changed in 2006, making the mailing address part of the public checklist RSA 654:31-a.

### **DO ONE OR MORE SELECTMEN NEED TO BE PRESENT FROM THE START TO THE FINISH OF AN ELECTION?**

Selectmen are responsible for establishing election budgets, the set-up of the polls before the opening of the polls, and the signing of the ballot box seal after counting is completed at the end of the day. For the state primary and general elections the New Hampshire Constitution requires selectmen to attend the election. New Hampshire Constitution,

Part 2, Article 32. For other elections, if the selectmen are not on-site during the election, they should be available for recall to the polls by the clerk or the moderator. The Selectmen should be prepared or have town employees prepared to deal with any problems, such as light bulbs illuminating the polling booths burning out, that might develop during voting.

### **A PERSON WHOSE PHYSICAL DISABILITY DOES NOT ALLOW THEM TO SIGN THEIR NAME USES A STAMP IN PLACE OF SIGNING THEIR NAME. THE ABSENTEE BALLOT REQUEST AND THE ABSENTEE BALLOT AFFIDAVIT ENVELOPE WILL ONLY HAVE A STAMPED NAME ON THEM. IS THIS ACCEPTABLE?**

Some accommodation should be made to allow a person with this type of disability to vote. The best practice would be for the clerk to appoint someone neutral to take the absentee ballot to the voter and to verify that the stamped name is legitimate as the voter’s signature. The clerk’s appointee should countersign both the application and the affidavit envelope next to the stamped signature or submit a written and notarized statement to accompany the sealed affidavit envelope verifying that the voter himself or herself caused the ballot to be marked and the affidavit to be stamped with the voter’s signature. New Hampshire Constitution, Part 1, Article 11.

### **CAN AN OBVIOUSLY IMPAIRED PERSON WITH ALZHEIMER’S DISEASE OR A PERSON WITH A DISABILITY WHO IS UNABLE TO COMMUNICATE BE ASSISTED IN VOTING BY A FAMILY MEMBER OR FRIEND?**

Persons with Alzheimer’s disease or persons with other disabilities, who are otherwise qualified as voters, should be allowed to vote as long as they are able to vote without assistance. If the voter needs assistance, he or she must be able to

communicate his or her choice on how their ballot should be marked. Any means of communication that could be understood by a stranger should be considered acceptable. This might include communication such as blinking their eyelids once for yes and twice for no, or tapping a finger once or twice, as the person assisting them reads off the choices. The moderator should determine whether, were the voter assisted by an inspector of election who is a relative stranger to the voter, could the voter communicate his or her choices to the inspector. If yes, the voter should be allowed to vote with assistance from the person of the voter's choosing. If no, the voter is unable to cast a vote and therefore should not be allowed to vote. A family member or friend should not be allowed to mark the ballot based on how the family member or friend believes the voter would have voted had the voter been able to communicate a choice. One way for a moderator to make this determination is to ask the voter who is requesting assistance a partisan neutral question that tests the voter's ability to communicate a choice to a stranger. Using historical political figures, who are not affiliated with a current political party allows posing a question that is in the context of an election, while avoiding any appearance of partisan preference. An example is: If the election today were electing a United States President, and if the candidates were George Washington and Thomas Jefferson, who would you vote for? RSA 659:20.

**AN 18 YEAR OLD APPEARED AT THE POLLS AND HAD NO PHOTO ID. SHE WAS LIVING WITH A FRIEND'S FAMILY. SHE WAS ASKED TO SECURE A PHOTO ID BEFORE BEING GIVEN AN AFFIDAVIT OF DOMICILE. SHE DID NOT RETURN. WAS THIS THE RIGHT PROCEDURE?**

The applicant has a duty to establish either her identity, age, citizenship and domicile in the town or ward. The supervisors are allowed to exercise their judgment in determining what constitutes proof of identity, age, citizenship, and domicile. The election officer taking the oath for a domicile affidavit is allowed to exercise his or her judgment in determining what constitutes proof of identity.

RSA 654:12 was changed in 2006 to provide further guidance on how an applicant for voter registration can prove his or her identity. If the applicant does not have a photo ID in his or her immediate possession, he or she may prove identity through any other reasonable means, including, but not limited to, having another voter verify identity. As a last resort the person may use a challenged voter affidavit to prove identity. If the applicant could somehow establish her identity, the applicant should be allowed to swear or affirm a domicile affidavit. Here if a family member of the family she was living with was present, and the family member is known to the election officer and would vouch for the applicant's identity, it would be appropriate for an election officer to allow the applicant to swear or affirm a domicile affidavit. New Hampshire Constitution, Part 1, Article 11; RSA 654:1; RSA 654:2; RSA 654:12.

**DOES A CHILD BORN OUTSIDE THE UNITED STATES WITH A PARENT WHO IS A CITIZEN AUTOMATICALLY BECOME A UNITED STATES CITIZEN ?**

Yes, if the following conditions are met:

- At least one parent of the child is a citizen of the U.S., whether by birth or naturalization;
- The child is under the age of eighteen years;
- The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

(Section 320 of the Immigration and Nationality Act {8 U.S.C. 1431} [www.immigration.gov](http://www.immigration.gov)

## DEFINITIONS

**Day** Unless a specific statute provides otherwise, when a duty or deadline is to be reckoned from a day or date, that day or date shall be excluded from and the day on which an act should occur shall be included in the computation of the period or limit of time. Saturdays, Sundays, and holidays are included when counting, except that if the last day for performing the act falls on a Saturday, Sunday, or Holiday, it shall be deemed duly performed if it is performed on the following business day. RSA 652:18. For example RSA 669:30 provides that when a town clerk receives a proper application for a recount, “the clerk shall appoint a time for the recount not earlier than 5 days nor later than 10 days after the receipt of said application. Therefore if the application was received on Thursday, the clerk should consider Friday day 1, Saturday day 2, Sunday day 3, Monday day 4, Tuesday day 5 or the first day on which the recount could be scheduled, Wednesday day 6, Thursday day 7, Friday day 8, Saturday day 9, and Sunday day 10, therefore Monday, the next business day, would be the last day on which the recount could be scheduled.

**ElectionNet (SVRS).** The statewide voter registration system required by the Federal Help America Vote Act of 2002.

**End of Day.** Whenever the election laws require a filing with or action by an official, such filing or action shall be performed before 5 o'clock in the afternoon of the stipulated day. During the afternoon of the stipulated day, if the filing is to be done with a clerk, the school district clerk or his

or her designee or the town clerk or his or her designee, shall arrange his time so as to be available between the hours of 3 o'clock and 5 o'clock. RSA 652:20

**Party** The term “party” when used in the election laws means any political organization which at the preceding state general election received at least 4 percent of the total number of votes cast for any one of the following: the office of governor or the offices of United States Senators. RSA 652:11.

**Supervisor of the Checklist.** The term “supervisor of the checklist” includes registrars or any similar election official who performs the functions of registering voters or correcting the checklists in cities. RSA 652:14.

**Town.** The term “town” when used in the election laws includes wards in cities. RSA 652:16

**Undeclared Voter.** The term “undeclared voter” shall mean a voter who is registered as a member of no political party. RSA 652:16-a.

**UOCAVA** “Uniformed and Overseas Citizens Absentee Voters Act” This term applies to the federal law that enables members of the military, their spouses and dependents and U.S. citizens living temporarily or indefinitely outside the U.S. to vote using an absentee ballot.



## **XX. RETENTION AND PRESERVATION OF BALLOTS CHART**

<b>Election</b>	<b>Ballots Retained by</b>	<b>Period of Retention, provided no recount is requested.</b>
State General Election Any ballot cast statewide on a Referendum or Constitutional Amendment Primary Elections RSA 659:100	City or Town Clerk (Unless requested by the Secretary of State – RSA 659:99)	60 Days
Town Election RSA 669:25; RSA 669:100	Town Clerk	60 days
Town Election Any question on the ballot at town meeting. RSA 669:25; RSA 659:100	Town Clerk	60 days
School District Elections RSA 671:30	School District Clerk	60 days
Federal Elections (State Primary, State General, and Presidential Primary)	Town or City Clerk	22 months (42 U.S.C. 1974)

## **XXI. ABSENTEE VOTER FORMS**

### **ABSENTEE BALLOT RETURN ENVELOPE SAMPLE**

#### **STATE OF NEW HAMPSHIRE**

#### **STATE ABSENTEE BALLOT**

**Absence from City or Town.** A person voting by absentee ballot because of absence from the city or town in which he or she is entitled to vote shall fill out and sign the following certificate: I do hereby certify under the penalties for voting fraud set forth below that I am a voter in the city or town of \_\_\_\_\_, New Hampshire, in ward \_\_\_\_; that I will be absent on election day from said city or town and will be unable to vote in person; that I have carefully read (or had read to me because I am blind) the instructions forwarded to me with the ballot herein enclosed, and that I personally marked the ballot within and sealed it in this envelope (or had assistance in marking the ballot and sealing it in this envelope because I am blind).

Signature \_\_\_\_\_ Print Name \_\_\_\_\_

**Absence Because of Religious Observance or Physical Disability.** A person voting by absentee ballot because of religious observance or physical disability shall fill out and sign the following certificate: I do hereby certify under the penalties for voting fraud set forth below that I am a voter in the city or town of \_\_\_\_\_, New Hampshire in ward \_\_\_\_; that I will be observing a religious commitment which prevents me from voting in person or that on account of physical disability I am unable to vote in person; that I have carefully read (or had read to me because I am blind) the instructions forwarded to me with the ballot herein enclosed, and that I personally marked the ballot within and sealed it in this envelope (or had assistance in marking the ballot and sealing it in this envelope because I am blind).

Signature \_\_\_\_\_ Print Name \_\_\_\_\_

**In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.**

**FORM A**

# NOTICE OF REQUIREMENTS TO USE ABSENTEE BALLOT

## **IMPORTANT NOTICE – PLEASE READ** **MAKE SURE YOUR VOTE COUNTS**

You have requested an absentee ballot

You may vote by mail using an absentee ballot only if on election day you will be unable to vote in person because you:

- Will be absent from the town or city where you are registered to vote; or
- Cannot appear in public because of observance of a religious commitment;
- Are unable to vote in person by reason of a physical disability;
- Are unable to appear at the polls at any time during polling hours because an employment obligation requires you to remain physically at work or to be in transit to or from work from the time the polls open until after the polls close.

If you do not meet one of these requirements, then you may not vote by absentee ballot. If you are not eligible to vote by mail, please do vote in person on election day at your polling place.

For your absentee ballot vote to be counted you must:

- Satisfy one of the requirements listed above;
- Mark your ballot and place it in the envelope provided; and
- Sign the affidavit printed on the outside of the envelope certifying under penalty of voting fraud that you meet one of these requirements. RSA 657:7.

Get-out-the-vote advertising has encouraged voting by mail. If you are qualified and will be unable to vote in person, please do vote by mail. To ensure your vote can be counted please carefully review the requirements for voting by absentee ballot and if you are qualified carefully complete the absentee voter affidavit on the envelope.

The moderator will compare the signature on the written request for an absentee ballot to the signature on the Absentee Ballot Affidavit Envelope and your absentee ballot will be counted only if it appears that the same person signed both documents. Therefore, it is important to use the same signature on each form.

Anyone who votes or attempts to vote under the provisions of absentee voting law, chapter 657, who is not entitled to vote by absentee ballot or anyone who knowingly votes or attempts to vote in violation of this chapter shall be guilty of a misdemeanor. RSA 657:24.

If you have any questions please contact \_\_\_\_\_.

# STATE OF NEW HAMPSHIRE ABSENTEE VOTER REGISTRATION FORM



(RSA 654:17)

Enabling Residents Who are Physically Disabled to Register to Vote

## AFFIDAVIT

I, \_\_\_\_\_ do hereby swear or affirm, under the penalties for voting fraud set forth below, the following:

1) That my legal domicile is in the town of \_\_\_\_\_, New Hampshire, I will be of the age of 18 years or over on election day, and am entitled to vote in the election to be held in said town on \_\_\_\_\_, 20\_\_\_\_, except for the fact that my name does not appear on the checklist to be used in said town at such election;

2) That I am unable by reason of physical disability personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;

3) That I hereby enclose one of the following as proof of identity and domicile:

(a) A copy of a current and valid New Hampshire driver's license or an armed services identification or other photo identification issued by the United States government that shows my name and address; or

(b) A copy of a current and valid photo identification and a copy of a current utility bill, bank statement, government check, paycheck, other government document that shows my name and address, or a letter from the administrator of a nursing home or similar facility affirming that I am a resident of that facility that was provided to me at my request pursuant to the administrator's duty to provide such a letter upon my request;

4) That I acknowledge that if I do not provide a copy of proof of identity and domicile as required by section 3) above, this application may not be approved; and

5) That I hereby make application for the addition of my name to the checklist of said town to be used at said election.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

## AFFIRMATION

I, \_\_\_\_\_, the undersigned witness, do hereby swear or affirm, under the penalties for voting fraud set forth below, that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the above-named \_\_\_\_\_ having satisfied me as to his or her identity signed the foregoing affidavit in my presence, and did before me swear to (or affirm) the truth of the statements therein contained.

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

*In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.*

This form and the Voter Registration Form, when completed, are to be sent directly to the Town or City Clerk of your domicile

STATE OF NEW HAMPSHIRE  
ABSENTEE VOTER REGISTRATION FORM



(RSA 654:17)

Enabling Residents Temporarily Absent from Town (City) to Register to Vote

AFFIDAVIT

I, \_\_\_\_\_ do hereby swear or affirm, under the penalties for voting fraud set forth below, the following:

1) That my legal domicile is in the town of \_\_\_\_\_, New Hampshire, I will be of the age of 18 years or over on election day and am entitled to vote in the election to be held in said town on \_\_\_\_\_, 20\_\_\_\_, except for the fact that my name does not appear on the checklist to be used in said town at such election;

2) That I do not intend to be present within said town at such time prior to said election as shall enable me personally to appear before the supervisors of the checklist of said town in their regular sessions for the correction of the checklist for said election;

3) That I am temporarily residing in \_\_\_\_\_  
(city and state) or (city, province and country) (zip code)

4) That I hereby enclose one of the following as proof of identity and domicile:

(a) A copy of a current and valid New Hampshire driver's license or an armed services identification or other photo identification issued by the United States government that shows my name and address; or

(b) A copy of a current and valid photo identification and a copy of a current utility bill, bank statement, government check, paycheck, other government document that shows my name and address, or a letter from the administrator of a nursing home or similar facility affirming that I am a resident of that facility that was provided to me at my request pursuant to the administrator's duty to provide such a letter upon my request;

5) That I acknowledge that if I do not provide a copy of proof of identity and domicile as required by section 4) above, this application may not be approved; and

6) That I hereby make application for the addition of my name to the checklist of said town to be used at said election.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

AFFIRMATION

I, \_\_\_\_\_, the undersigned witness, do hereby swear or affirm, under the penalties for voting fraud set forth below, that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the above-named \_\_\_\_\_ having satisfied me as to his or her identity signed the foregoing affidavit in my presence, and did before me swear to (or affirm) the truth of the statements therein contained.

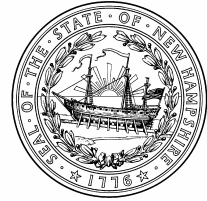
\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

*In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.*

This form and the Voter Registration Form, when completed, are to be sent  
directly to the Town or City Clerk of your domicile

**STATE OF NEW HAMPSHIRE**  
**OVERSEAS CITIZENS FEDERAL ELECTION**  
**ABSENTEE REGISTRATION APPLICATION**



Enabling United States citizens domiciled outside the United States, whose last domicile was in New Hampshire, to register absentee to vote in federal elections only.  
(RSA 654:3, 20, 21, 23)

**AFFIDAVIT**

I, \_\_\_\_\_  
(print name)

do hereby swear or affirm, under the penalties for voting fraud set forth below, the following:

- 1) That I am a United States citizen;
- 2) That I have been domiciled in Canada or Mexico or any other country outside the continental United States since \_\_\_\_\_;  
(month) (year);
- 3) That I hold a valid passport or card of identity with Registration No. \_\_\_\_\_ issued by the United States Secretary of State;
- 4) That, immediately prior to my departure from the United States, I was legally domiciled in the state of New Hampshire at the following address: \_\_\_\_\_  
(Street and Number or Rural Route, etc.) (City or Town)
- 5) That I will be of the age of 18 years or older on election day, have complied with all applicable qualifications and requirements of the state of New Hampshire, and am entitled to vote in the next subsequent federal election to be held in said state;
- 6) That I do NOT maintain a domicile, am NOT registered to vote and am NOT voting in any other state, territory, or possession of the United States, or election district thereof;
- 7) That my party affiliation (if any) is \_\_\_\_\_
- 8) That my permanent address outside the continental United States is: \_\_\_\_\_  
(Street or Route Number) (City, Province, Country)
- 9) That I hereby make application for the addition of my name to the checklist of \_\_\_\_\_, New Hampshire, as an overseas citizen living outside the continental United States entitled to vote in any federal election held therein.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

***In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.***

**This form, when completed, is to be sent directly to the Town or City Clerk where you were legally domiciled in the State of New Hampshire**

## ABSENTEE - NOT REGISTERED TO VOTE NOTICE

*This is a model notice to be sent to persons requesting absentee ballots who are not yet registered to vote including those who have submitted forms requesting to be registered, but those forms were inadequate or incomplete. This is a model form, not a mandatory form, therefore clerks should feel free to make any changes they feel are helpful.*

**You are not yet registered to vote.** If you return your absentee ballot without submitting the additional forms or information described below **your ballot will not be counted!**

To register to vote without appearing before the Supervisors of the Checklist or the Town Clerk you must submit the following forms. I have marked those that have already been received with an X in the left hand column and those that you **must return in the outer envelope** with an X in the right hand column:

You have satisfactorily submitted	Form Required	You must submit these forms
	Voter Registration Form	
	Affidavit (Absence from town); or	
	Affidavit (Physical Disability)	
	A copy of a valid New Hampshire Driver's License showing address claimed as domicile on the Voter Registration Form; or	
	A copy of an armed services identification; or	
	A copy of a photo identification issued by the United States government that shows your name and address; or	
	A copy of a current and valid photo identification <b>and</b> a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows your name and the address you are claiming as a domicile in this town.	

To become registered as a voter and to submit an absentee ballot that will be counted you must:

1. Properly complete the forms indicated above;
2. Ensure that you have signed the forms;
3. If you have to submit an Affidavit, ensure that a witness has signed the Affidavit;
4. If you have not previously submitted satisfactory proof of identity and domicile, ensure that you have submitted a readable copy of one of the forms of proof of identity and domicile listed above;
5. Place the forms and proofs of identity in the outer envelope, **not in the affidavit envelope**, and return them with your marked ballot sealed in the inner, affidavit envelope;
6. Ensure that you properly complete and sign the affidavit envelope.

If you have any questions please contact: \_\_\_\_\_

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## OFFICIAL FEDERAL WRITE-IN BALLOT

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---

PRESIDENT/VICE PRESIDENT

---

U.S. SENATOR\*

---

U.S. REPRESENTATIVE/DELEGATE\*\*/RESIDENT COMMISSIONER\*\*

---

\*Legal residents of the District of Columbia may vote only for President/Vice President and Delegate.

\*\* Legal residents of American Samoa, Guam, Puerto Rico, and the Virgin Islands may vote only for Delegate or Resident Commissioner to the Congress

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## **XXII. OATHS AND AFFIDAVITS**

### **OATH OF OFFICE**

**WORDS IN THE OATH OF OFFICE.** The oath of office is set forth in the New Hampshire Constitution at Part 2, article 84 {*Alternative language for those scrupulous of swearing set forth in italics in the brackets* – the language the italicized words are substituted for is underlined}:

I, (state your complete name) do solemnly swear {*affirm*}, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitution thereof. So help me God {*This I do under the pains and penalties of perjury*}.

I,(state your complete name) do solemnly and sincerely swear and affirm {*affirm*} that I will faithfully and impartially discharge and perform all duties incumbent on me as (state office elected/appointed to) according to the best of my abilities, agreeably to the rules and regulations of this constitution and law of the state of New Hampshire. So help me God{*This I do under the pains and penalties of perjury*}.

New Hampshire Constitution, Part 2, Article 84; RSA 42:1; RSA 21:24; RSA 21:25. All town officers must take the oath of office. RSA 669:9

## **SWEARING IN OF INDIVIDUALS REQUIRING AND PROVIDING ASSISTANCE**

Immediately before each event when a person assists another requiring assistance in voting, the voter requiring assistance should first swear an oath requiring assistance, and the person providing assistance should secondly swear an oath not to influence the voter.

### **Oath of Individual Registered Voter Requiring Assistance in Voting Pursuant to RSA 659:20**

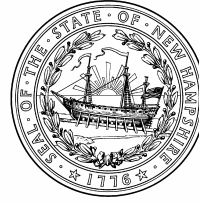
I, \_\_\_\_\_, do solemnly swear (or affirm) that I cannot read or that, because of disability, I am unable to mark a ballot and require assistance in voting. See RSA 659:20

### **Oath of Individual Providing Assistance to an Individual Registered Voter Pursuant to RSA 659:20**

I, \_\_\_\_\_, do solemnly swear (or affirm) that in providing assistance to \_\_\_\_\_( voter), I shall mark the ballot as directed by him/her and will not unduly influence his/her decision with respect to selecting any candidate or issue presented on the ballot and that I shall thereafter give no information regarding same. See RSA 659:20

# CITIZENSHIP AFFIDAVIT

(RSA 654:12)



***Please Print.***

Date: \_\_\_\_\_

Full Name: \_\_\_\_\_

Name at birth if different: \_\_\_\_\_

Place of birth: \_\_\_\_\_

Date of birth: \_\_\_\_\_

Place of Naturalization: \_\_\_\_\_

Date of Naturalization: \_\_\_\_\_

I hereby swear and affirm, under the penalties for voting fraud set forth below, that I am a United States citizen and that to the best of my knowledge and belief the information above is true and correct

\_\_\_\_\_  
Signature of Applicant

***In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.***

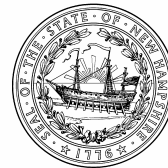
On the date shown above, before me, \_\_\_\_\_  
(print name of election officer)

appeared \_\_\_\_\_ [known to me or satisfactorily proven  
(print name of person whose signature is being witnessed)]

(circle one)] to be the person whose name appears above, and he or she subscribed his or her name to the foregoing affidavit and swore that the facts contained in this affidavit are true to the best of his or her knowledge and belief.

\_\_\_\_\_  
Election Official Authorized by RSA 659:30

**DOMICILE AFFIDAVIT**  
(RSA 654:12)



*Please print.*

Date: \_\_\_\_\_

Full Name: \_\_\_\_\_

Current Domicile Address: \_\_\_\_\_  
(Street and Ward Number)

\_\_\_\_\_  
Town or City State Zip Code

Date when current domicile was established: \_\_\_\_\_  
Month Year

Place of birth: \_\_\_\_\_

Date of birth: \_\_\_\_\_

Address of last previous domicile: \_\_\_\_\_  
Street and Ward Number

\_\_\_\_\_  
Town or City State Zip Code

I hereby swear and affirm, under the penalties for voting fraud set forth below, that my established domicile is at the current domicile address I have entered above and that to the best of my knowledge and belief the information above is true and correct.

\_\_\_\_\_  
(Signature of applicant)

***In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.***

On the date shown above, before me, \_\_\_\_\_  
(print name of election officer)

appeared \_\_\_\_\_ [known to me or satisfactorily proven  
(print name of person whose signature is being witnessed)]

(circle one)] to be the person whose name appears above, and he or she subscribed his or her name to the foregoing affidavit and swore that the facts contained in this affidavit are true to the best of his or her knowledge and belief.

\_\_\_\_\_  
Election Official Authorized by RSA 659:30

# AFFIDAVIT OF CHALLENGED VOTER

(RSA 659:27-33)

I, \_\_\_\_\_ do solemnly swear (or affirm) that I am the identical person whom I represent myself to be, that I am a duly qualified voter of this town (or ward) and have a legal domicile within.

\_\_\_\_\_  
(Signature of Challenged Voter)

State of New Hampshire

County of \_\_\_\_\_, s.s.

On the \_\_\_\_\_ day of \_\_\_\_\_, 2006, the said \_\_\_\_\_  
\_\_\_\_\_ took and subscribed to the above oath before the below-named election officer.

\_\_\_\_\_  
(Signature of Election Officer)

Title:

## **XXIII. ELECTION DAY FORMS AND SUPPLIES**

### **RECOMMENDED ELECTION SUPPLIES**

For each polling place:

Flag	Manila Folders (5)
Ballot Box (1)	Filament Sealing Tape
Stapler	Brown Wrapping Paper
Staple Remover	Thumb Tacks
Ballot Markers	Electrical Strip
Pencil Sharpener	Extension Cord
Black Pens (8)	Speed bumps to prevent tripping on cords
Note Pad	Rubber Bands
Red Pens (4)	Shoe Box
Fasteners	Letter Opener
Regular Pencils (10)	Magic Markers
Lights for ballot (1 each booth)	Rail – State Plastic Rail Tape or
Magnifying devices (1 each booth)	rope/Ribbons to establish a rail around
Rulers (4)	the voting area
Scissors	Scotch Tape
Rubber Fingers	Ward Map
Padlock & Keys (1)	Carbon Paper
Alphabet Tabs	Printing Calculator
Masking Tape	Privacy Folders for Ballots (where ballot
String	counting machines are in use)
Paper Clips	

## ELECTION FORMS CHECKLIST

Certified Checklists (2) in and out lists

Checklist (1) Posting

Sealed Box of Official Ballots

Absentee Ballot List (2)

Absentee Ballots

Accessibility Checklist

Notice to Voters

Sample Ballots

Voter Instructions

Purity of Election Laws

Moderator Certificates

Affidavit of Challenged Voter Forms  
Undeclared re-registration report from  
ElectionNet

Undeclared re-registration list from  
ElectionNet

Undeclared re-registration cards (for new  
voters)

Tally Sheets

Ballot Returned Sealers

Ward Officials Election Procedural  
Checklist

Payroll Forms

Oath of Office Forms

W-4 Forms

Signs - Alphabetical Last Names  
Board of Supervisors of the  
Checklist  
IN/OUT/EXIT

## **XXIV. TESTING OF ACCUVOTE VOTING MACHINES**

**TO:** Town and City Clerks and Moderators

**FROM:** Secretary of State's Office

Fifty (50) extra ballots for each Political Party (100 ballots in total) are being sent with your official ballots for use in testing the voting machines to make sure they count the votes correctly on election day.

It is important that a thorough test of each machine be done as soon as the ballots are received, opened and verified in accordance with RSA 656:20, II.

**NOTE: Be sure to remove the TEST ballots from the ballot box before resealing. Mark each TEST ballot with a big red "TEST" in the area above the Secretary of State's signature, so there is no chance of them being confused with the official ballots.**

To adequately test the computer program, use these extra ballots marked "TEST" (and any additional ballots you feel are necessary) by marking the ballots in such a way to demonstrate at least one vote for each candidate on the ballot, overvotes, undervotes, write-ins and any possible combination that you think a voter may indicate on a ballot so that your test will be thorough and complete. Be sure to mark any additional ballots you use for testing with "TEST".

Keep a hand-written tally sheet during the course of your testing and if the program is working correctly, the number of votes on your tally sheet should correspond with the vote on your computer printout. Many clerks use a blank ballot for this purpose.

**This test should be completed no later than Wednesday September 6, 2006. Any computer problems, including tabulation errors and mechanical failures must be reported to this office and to LHS immediately.**

A **copy** of the computer printout and the tally sheet signed by the town or city clerk must be filed at once with this office. You may either print a second tape using the ballot counting machine or you may photocopy the tape. **Do not send us your "TEST" ballots.** If your test results do not match your hand count results contact the Secretary of State's Office and LHS immediately by phone.

After the testing is complete, be sure to seal your "TEST" ballots, test reports and test results in a sealed container and place it in a secure location for future reference, if necessary.



XXV. SIGNS

**THE OFFICE OF THE  
TOWN CLERK WILL  
BE CLOSED  
ELECTION DAY**

**ENTER  
HERE**

**EXIT  
HERE**

**SAME DAY  
VOTERS  
REGISTER  
HERE**

**IF YOU WISH TO USE THE  
ACCESSIBLE VOTING  
SYSTEM, ASK AN ELECTION  
OFFICIAL**

**PREVIOUSLY UNDECLARED  
VOTERS WHO WISH TO  
RETURN TO UNDECLARED  
SEE SUPERVISORS OF THE  
CHECKLIST**

**YOU MUST  
ANNOUNCE YOUR  
NAME TO THE  
BALLOT CLERK  
RSA 659:13**

# **XXVI. HAND COUNTING INSTRUCTIONS**

## **COUNTING INSTRUCTIONS – MODEL 1**

### **SORT AND STACK BY CANDIDATE METHOD**

*NOTE: This is a model describing how some moderators have chosen to count ballots. State law authorizes the moderator to choose the system of hand counting to be used and to supervise the counting. RSA 659:60. This model is presented as a best practice in hand counting, based on the secretary of state's experience with hand recounts. However, neither state law nor the Secretary of State require that any particular system of counting be used. Moderators should ensure that the system of counting they adopt is accurate and efficient.*

*This process enables team members to simultaneously examine each mark on each ballot at least once, and to keep things simple by identifying choices in a single race at a time. If one team member makes a mistake, the other can catch it. This ballot sort and stack method is considered the faster and easier method, even though each mark is seen more times than the method using ballot reading and tally marks. Counters who have tried other methods express more pleasure with the sort and stack method because (a) it is simpler to count, and (b) counters are more confident in the results.*

The instructions through step # 7 are the same as for counting using Model 2, the ballot-by-ballot method.

Step #1 – Close the Polls.

Step #2 – Verify that all absentee ballots have been processed.

Step #3 – Rearrange the polling place for counting. Counting tables must be at least 4 feet from the rail. All counting, however, must occur where it is visible to members of the public located outside the rail.

Step #3a – (Optional whether done election night or later) Have the supervisors count the number of registered voters (including those who registered on election day) who are checked off as having voted on the checklist.

Step #4 – Identify all those who will be counting.

Step #5 – Identify those who will be counting who are not election officials and who have not taken an oath of office.

Step # 6 – Swear in these non-election officials as election officials (inspectors of election pro tempore). RSA 658:7 gives the moderator authority to appoint such election officials as he or she deems necessary. As election officials, the ballot counters are swearing or affirming that they will perform their duties lawfully and they become subject to criminal prosecution for official misconduct pursuant to RSA 666:3.

Step # 7 – Read the instructions for counting to all the election officials who will be counting.

**Overview of the counting process:** Ballots will be sorted into piles, with one pile for each candidate or alternative on a question, with separate piles for skipped(abstentions) and defective ballots. The piles will then be counted by grouping the ballots into groups of ten, then counting the number of groups. Where a close race is at issue, the process may be repeated by a second counting team and the results of the two teams



compared to ensure they are the same. Once the results for one office or question are determined, the ballots will be re-sorted into piles for the next office or question.

Step # 8 - Open the ballot box(es) in view of the public. Place an established quantity of ballots on the table to be used by each counting team. Experience suggests that by counting ballots in groups of 50, when it becomes necessary to redo a particular part of the process because the results do not equal the number of ballots, this number is manageable.

Step #- 9 - Have the counting teams sort the ballots by the first race that is to be counted.

For example, at a town election where there is only one contested race, for selectman and there are three candidates for that single office, the ballots would be separated into 5 piles. One pile for each of the three candidates, one pile for skipped or abstention ballots (where no candidate received a vote) and defective ballots (where two or more candidates received a vote) and a final pile for write-in votes.

Step #10 – As the teams sort ballots into piles, if there is any question regarding how a ballot should be counted, call the moderator to your table and seek his or her instructions on how the ballot should be counted.

If a ballot is marked for any office or question in a way that does not leave the intention of the voter clear, or if, after getting basic instructions on how different marks are counted from the moderator, there is disagreement over how to count a particular ballot for a particular office, a vote should be taken of the election officers present and counting votes. RSA 659:64. The moderator should call together the election officers, discuss the ballot in question and take a vote. The majority rules, and if there is no alternative receives a majority of the votes, the ballot shall be treated as defective and therefore as an abstention for that office or question.

If there are many questioned ballots that need to be voted on, the moderator may choose to hold these ballots aside and vote on several at one time. If this is done, however, it is the best practice that all questionable ballots be voted on before the team totals are tallied up. This ensures that the election officials do not know whether the vote on a particular ballot will affect the outcome of the election. This process reinforces the neutrality and enhances the legitimacy of the counting process.

Step # 11 - Prepare a tally sheet. (Tally sheets should be prepared ahead of time.) The easiest procedure is to use sample ballots or photocopies of sample ballots. The tally sheet should have a space for the team to write in the total votes for each candidate, and the total skipped, defective, and write-in ballots.

Step #12 – Once each table has the ballots assigned to it sorted, start with the pile of ballots for the first candidate on the ballot. All other ballots (the other 5 piles) should be set aside, but remain in public view on that table. The team should then count the ballots in the first candidate's pile into groups of ten. The process used to make the groups of ten ballots should include the team members looking at the ballot to ensure (double check) it was initially sorted into the correct candidate's pile. Each group of ten ballots should be stacked at right angles, one on top of the other. Once a pile is completely grouped into piles of ten ballots each, the team can count the piles to obtain the total votes for that candidate in the pile. The team should write in the total votes for that candidate on the tally sheet. Then, start the grouping and counting process for the next candidate.

Step # 13 – When all the piles have been counted, that counting team is done with that set of ballots for that race. The team should add the votes for each candidate and the number of skipped/abstention ballots and the number of defective or overvote ballots. This total should equal the total number of ballots in the pile (for example 50 if the recommendation to count ballots in groups of 50 is adopted).

Step # 14 – The team should then start the process over for the next office or issue to be counted.

Step # 15 – The moderator should designate some election officer who routinely works with numbers, often the clerk, to tally the team totals. Ideally a second election officer will assist and act as observer for this tallying process. Usually these individuals do not work on a counting team. As each team completes its totals, the tally sheets should be turned in.

Step # 16 - When the last pile(s) have been counted and turned into the clerk or whoever is tallying the team totals, the moderator should ensure that these officials have peace and quiet to finish the tallies. The tallying must occur in public, however, when all the election officers and counters gather at the tallying table and watch the final calculations it puts pressure on those making the final calculations and makes errors more likely. The tallying team should tally the results for all elections. The use of a printing calculator or a laptop with a spreadsheet program such as Excel allows the team or the moderator to check the printed tape or the computer file as a means of ensuring the accuracy of the tally. The final tallies should be written down and presented to the moderator.

Step # 20 – The moderator should stop before announcing the results and check the final tallies. If a count was done of the total number of persons checked off as having voted on the checklist, the tallies for each office and question should be verified against that count. The number of ballots used at the election must be determined. The total votes for all candidates, including write-ins, plus the skipped/abstention ballots plus the defective or overvote ballots should equal the total number of ballots used. The total votes for all candidates should never exceed the total number of ballots used or the total number of voters checked off as having voted at the election.

In towns or wards with 1000s of ballots and 1000s of voters checked off on the checklist, the moderator should be looking for any significant discrepancies between the totals. It is difficult to get a perfect count from the checklist. Therefore, it is not essential that the total count for each office or question exactly match the vote totals. Provided the write-in, skipped and defective votes were tallied, however, the totals from one office to the next should be the same. If any discrepancies are found, the moderator should investigate and attempt to resolve the discrepancy before declaring the results. Every effort should be made to correct any error that leads to the total votes for all candidates exceeding the total number of voters voting or the total number of ballots used. Other discrepancies, provided the discrepancy is smaller than the margin of victory in the closest race, do not leave the will of the voters in doubt.

# COUNTING INSTRUCTIONS – MODEL 2

## ALL OFFICES, BALLOT- BY- BALLOT METHOD

***NOTE: This is a model describing how some moderators have chosen to count ballots. State law authorizes the moderator to choose the system of hand counting to be used and to supervise the counting. RSA 659:60. This model is presented as one example of an acceptable practice, however, neither state law nor the secretary of state require that any particular system of counting be used. Moderators should ensure that the system of counting they adopt is accurate and efficient.***

Step #1 – Close the Polls.

Step #2 – Verify that all absentee ballots have been processed.

Step #3 – Rearrange the polling place for counting. Counting tables must be at least 4 feet from the rail. All counting, however, must occur where it is visible to members of the public located outside the rail.

Step #3a – (Optional whether done election night or later) Have the supervisors count the number of registered voters (including those who registered on election day) who are checked off as having voted on the checklist.

Step #4 – Identify all those who will be counting.

Step #5 – Identify those who will be counting who are not election officials and who have not taken an oath of office.

Step # 6 – Swear in these non-election officials as election officials (inspectors of election pro tempore). RSA 658:7 gives the moderator authority to appoint such election officials as he or she deems necessary. As election officials the volunteer ballot counters are swearing or affirming that they will perform their duties lawfully and they become subject to criminal prosecution for official misconduct pursuant to RSA 666:3.

Step # 7 – Read the instructions for counting to all the election officials who will be counting.

Step # 8 - Open the ballot box(es) in view of the public. Place similar quantities of ballots on the table to be used by each counting team.

Step #- 9 - Have the counting teams count the ballots into piles of a known size (10, 25, 50 or 100 ballots).

Step #10 – Wrap each pile with a rubber band, clip it with a large binder clip, or stack them crosswise.

Step # 11 - Prepare a tally sheet. (Tally sheets should be prepared ahead of time.) The sheet should be organized in the same order as the ballot, with sections for each office and question and the name of each candidate listed in the same order as they are listed on the ballot. There should be a space following each name/question for one of the counters to put a hash mark for each vote for that candidate/question. See sample election tally sheet at page 150.

Step #12 – Overview of the counting process: Each counting team will usually count all races and questions in one pile of 50 ballots at a time. A mark must be made on the tally sheet for each ballot for each office and

question. Make a vertical line for the first four votes for any given candidate and then cross a horizontal line over the vertical lines for the fifth vote for that candidate, e.g., ///// . If the voter wrote in a candidate, that name should be written in on the tally sheet.

If the voter skipped a race or question, that is they did not vote for any candidate or did not mark either yes or no, put a hash mark in the “Skipped” line for that office on the tally sheet. If the voter overvoted, that is they voted for more candidates than they are permitted, put a hash mark in the “defective” line for that office on the tally sheet.

The objective will be that when the team is done counting the 50 ballot pile they will be able to total the hash marks for each candidate and question. The team will then total the votes for all candidates for each office and all the “yes,” “no,” skipped, and defective for each question. The total votes for a single seat office must equal 50 votes for that office (including the votes for each candidate, write-in, “skipped” and “defective”). For offices where the voter may vote to fill two positions (for example where the race is for state Representative where voters get to choose two) the total votes counted should total up to 100. For offices where the voter may vote to fill three positions the total votes counted should total 150, and so on. If the total does not equal 50 the team should check their hash marks for that office/question and correct any errors. The team is done counting a 50 ballot pile at the point when the office/question totals equal 50.

As the teams count if there is any question regarding how a ballot should be counted, call the moderator to your table and seek his or her instructions on how the ballot should be counted.

If a ballot is marked for any office or question in a way that does not leave the intention of the voter clear or if after getting basic instructions on how different marks are counted from the moderator there is disagreement over how to count a particular ballot for a particular office a vote should be taken of the election officers present and counting votes. RSA 659:64. The moderator should call together the election officers, discuss the ballot in question and take a vote. The majority rules, and if there if no alternative receives a majority of the votes, the ballot shall be treated as defective for that office or question.

If there are many questioned ballots that need to be voted on, the moderator may choose to hold these ballots aside and vote on several at one time. If this is done, however, it is the best practice that all questionable ballots be voted on before the team totals are tallied up. This ensures that the election officials do not know whether the vote on a particular ballot will affect the outcome of the election. This process reinforces the neutrality and enhances the legitimacy of the counting process.

Step # 13 - Starting with the first office on the ballot one counting team member (the reader) should read off the name of the candidate (the word yes or no for questions) who received the vote on the ballot being counted. The second member of the ballot counting team (the marker) should make a hash mark beside that name on the ballot. If the moderator can staff each team with three counters, the third counting team member (the observer) should look at the ballot and ensure that the correct name was read off and should watch the hash mark being made to ensure it is made in the correct row.

Step # 14- The reader then reads off the name of the candidate in the second office who received the vote on the ballot being counted, the marker should then make a hash mark on the tally sheet in the appropriate row, which is checked by the observer. Continue this process until the entire ballot has been marked on the tally sheet. Then proceed to the next ballot.

If a voter has not voted for any candidate for a particular office the reader should state “skipped” and the marker should mark the “skipped” row for that office on the tally sheet.

If the voter voted for two or more candidates for an office where the ballot instructs to vote for one the reader should read off “defective” and the marker should mark the “defective” row on the tally sheet. If the instructions are that a voter should vote for two and the voter voted for three or more , follow these same instructions.

Step # 15 – When all 50 ballots have been marked on the tally sheet the hash marks should first be totaled for each candidate including the “skipped” and “defective” rows and then for each office. The total votes for each office/question should equal 50. If they do not, go back through the pile and correct any counting/marking errors.

Step # 16 - Bind the pile of ballots with the tally sheet on top with a rubber band or clip and notify the moderator that he or she can pick up that pile.

Step # 17 – Start the process over with the next pile of 50 ballots.

Step # 18. – The moderator should designate some election officer who routinely works with numbers, often the clerk, to tally the piles. Ideally a second election officer will assist and act as observer for this tallying process. Usually these individuals do not work on a counting team. As each team completes a pile of 50 ballots and has confirmed the accuracy of the count, the moderator can carry the pile to the team who will be tallying the piles.

Step # 19. - When the last pile(s) have been counted and turned into the team that is tallying piles the moderator should ensure that these officials have peace and quiet to finish the tallies. The tallying must occur in public, however, when all the election officers and counters gather at the tallying table and watch the final calculations it puts pressure on those making the final calculations and makes errors more likely. The tallying team should tally the results for all elections. The use of a printing calculator allows the team or the moderator to check the printed tape as a means of ensuring the accuracy of the tally. The final tallies should be written down and presented to the moderator.

Step # 20 – The moderator should stop before announcing the results and check the final tallies. If a count was done of the total number of persons checked off as having voted on the checklist the tallies for each office and question should be verified against that count. In towns or wards with 1000s of ballots and 1000s of voters checked off on the checklist the moderator should be looking for any significant discrepancies between the totals. It is difficult to get a perfect count from the checklist, therefore, it is not essential that the total count for each office or question exactly match the vote totals. Provided the write-in, skipped and defective votes were tallied, however, the totals from one office to the next should be the same. If any discrepancies are found the moderator should investigate and attempt to resolve the discrepancy before declaring the results.

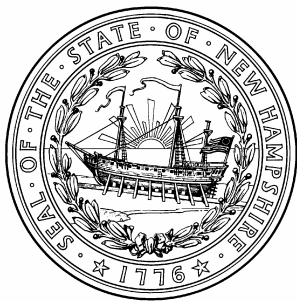
## **XXVII. ELECTION NIGHT FORMS**

### **ELECTION TALLY SHEET**

(Sample: Replace “Candidate A” with the name of the first candidate listed on the ballot, “Candidate B” with the name of the second candidate, etc. Depending on the design of your ballot it may be practical to use sample ballots as tally sheet or to easily create a tally sheet by adding hash mark columns and total columns to one sample ballot and photocopying the quantity of tally sheets you will need.)

**Enter total number of ballots being counted \_\_\_\_\_**

Governor	Hash Marks	Total
Candidate A		
Candidate B		
Candidate C		
Skipped/abstention		
Defective		
Write-in		
Write-in		
Write-in		
Write-in		
<b>OFFICE TOTAL – Must Equal Total Ballots being Counted</b>		
US Senator	Hash Marks	Total
Candidate A		
Candidate B		
Candidate C		
Candidate D		
Skipped/abstention		
Defective		
Write-in		
Write-in		
Write-in		
Write-in		
<b>OFFICE TOTAL – Must Equal Total Ballots being Counted</b>		
US Representative	Hash Marks	Total
Candidate A		
Candidate B		
Candidate C		
Candidate D		
Skipped/abstention		
Defective		
Write-in		
Write-in		
Write-in		
<b>OFFICE TOTAL – Must Equal Total Ballots being Counted</b>		



## MODERATOR'S CERTIFICATE

### 2006 STATE PRIMARY ELECTION

To the Town or Ward Clerk:

This is to certify that in accordance with RSA 658:32, the ballots forwarded by the Secretary of State to this town or ward have been examined and counted and I find that the total number of **OFFICIAL STATE PRIMARY BALLOTS** (excluding Absentee Ballots) is:

**REPUBLICAN BALLOTS** \_\_\_\_\_

**DEMOCRATIC BALLOTS** \_\_\_\_\_

and that all are for the use of the town or ward of \_\_\_\_\_

For towns using optical scanning machines please indicate the make, model and serial number for each machine you use in your town or ward:

\_\_\_\_\_  
\_\_\_\_\_

Does your machine require a special marking pen? \_\_\_\_\_

\_\_\_\_\_

Witness

\_\_\_\_\_

Moderator

A true copy Attest:

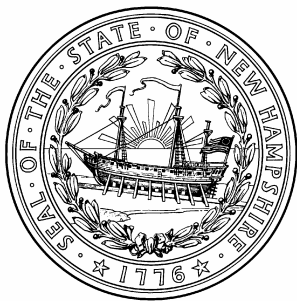
\_\_\_\_\_

Town or Ward Clerk

\_\_\_\_\_

Date

**(To be forwarded to the SECRETARY OF STATE on Election Night)**



## MODERATOR'S CERTIFICATE

### 2004 STATE GENERAL ELECTION

To the Town or Ward Clerk:

This is to certify that in accordance with RSA 658:32, the ballots forwarded by the Secretary of State to this town or ward have been examined and counted and I find that the total number of **OFFICIAL STATE GENERAL ELECTION BALLOTS** (excluding Absentee Ballots) is:

\_\_\_\_\_

and that all are for the use of the town or ward of \_\_\_\_\_

**For towns using optical scanning machines please indicate the make, model and serial number from each machine you use in your town or ward:**

\_\_\_\_\_  
\_\_\_\_\_

**Does your machine require a special marking pen?** \_\_\_\_\_

\_\_\_\_\_

Witness

\_\_\_\_\_

Moderator

A true copy Attest:

\_\_\_\_\_

Town or Ward Clerk

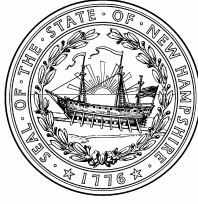
\_\_\_\_\_

Date

**(To be forwarded to the SECRETARY OF STATE on Election Night)**



# **LABEL FOR RESEALING BALLOTS**



**This Package Contains**

\_\_\_\_\_ **CAST BALLOTS**

\_\_\_\_\_ **CANCELLED BALLOTS**

\_\_\_\_\_ **UNCAST BALLOTS**

**Enclosed are the ballots  
from the state election  
held in the town of**

\_\_\_\_\_  
**(or, ward \_\_\_\_\_ in the city  
of \_\_\_\_\_  
held on the \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_  
required by law to be preserved.**

\_\_\_\_\_  
**Moderator or Designee**

\_\_\_\_\_  
**Moderator or Designee**

\_\_\_\_\_  
**Moderator or Designee**

\_\_\_\_\_  
**Selectmen or Designee**

RECEIVED \_\_\_\_\_  
(date)

at \_\_\_\_\_  
(minute of the day and hour)

\_\_\_\_\_  
**TOWN CLERK or CITY CLERK  
Or Designee**

# **XXVIII. RECOUNTS**

## **RECOUNTS - RULES OF PROCEDURE**

### **Single Seat Office RSA 660**

1. The Secretary of state will operate with two-person recount teams.
2. For each two-person team, each candidate may have one observer.
3. The Secretary of State will inform each candidate how many two-person teams will be conducting his/her particular recount.
  - a. If a candidate is not present at the recount, but chooses to have representatives present, he/she shall designate a principal representative.
  - b. The candidate or the principal representative shall be responsible for identifying, organizing, instructing, and supervising the candidate's observers.
  - c. The Secretary of State will conduct the recount as scheduled. The recount will not be delayed by the absence of a candidate or of a candidate's observers
  - d. The Secretary of State is not responsible for verifying the identity, candidate affiliation, or training of observers. It is the sole responsibility of the candidate or his/her principal representative to ensure that the candidate has an observer at each counting team.
4. Each candidate, directly or through his or her observers, will control the pace of the recount and bear responsibility for the accuracy of the recount.
  - a. The procedures set forth below allow the candidate or his/her observers to slow or stop the process at any point should doubt arise about how a ballot is being counted or the accuracy of the counting.
  - b. However, only one opportunity will exist to challenge the count of each ballot and only one opportunity will exist to challenge the accuracy of each step of the counting process.
  - c. When a candidate or his/her observer fails to make a challenge when that one opportunity arises, the candidate waives his or her privilege to contest the manner in which a ballot is counted or the accuracy of that step in the counting process.
5. Observers shall not have any writing instrument in their hands at any time while observing or while sitting at the recount table.
6. Observers and counting team members may request a reasonable break at any time.
7. Observers shall not touch any ballot.
8. Observers shall not have any food or drink at the recount table.

9. NO SMOKING in the building.
10. NO CELL PHONES may be used in the recount area.
11. Only counting team members, observers, and the Secretary of State and his staff may talk in any room where counting is being conducted. Much of the recount process requires that counters and observers maintain concentration and keep their focus on the ballot before them. Conversations between bystanders must be taken into the hallway or into a room where counting is not in progress.
12. The counting team will sort the ballots into a stack for each candidate, a stack for blanks, and a stack for write-in votes.
13. A counting team member shall position a stack for each candidate in front of the observer representing the candidate's opponent. A counting team member shall afford the observer an opportunity to view each ballot as it is sorted into a stack.
  - a. Each member of the counting team may be simultaneously presenting ballots to be sorted to different stacks.
  - b. Observers must immediately inform the counting team if the pace of sorting is not permitting the observer sufficient time to fully assess each ballot.
14. The moment when a ballot is presented for viewing by the observer is the **one and only opportunity** for the observer to challenge how the counting team intends to count the ballot.
15. If an observer challenges how a ballot is being counted, the counting team may agree that the ballot was inadvertently being sorted into the wrong stack and if the counting team and all observers agree, the ballot may be added to the correct stack.
16. If the counting team and any observer disagree on how to count a ballot, the ballot will be set aside into a separate stack. The Secretary of State will rule on and count the ballots in the protest stack.
17. After the sorting process is complete, one counting team member shall count the ballots from each stack into groups of 25 ballots.
  - a. The second counting team member shall recount each stack to verify that there are 25 ballots in each group.
  - b. Observers shall be afforded an opportunity to observe the counting in a manner that permits the observer to verify that the count is accurate. The moment when the second counting team member declares that a group contains exactly 25 ballots is the last moment when an observer can protest the accuracy of the count of that group.
18. The counting team shall count the number of stacks of 25 and any remaining ballots and enter the total number of ballots containing votes for each candidate on a tally sheet.
  - a. The counting team shall count in a manner that allows the observer to verify the accuracy of the count.
  - b. The counting team shall show each observer the completed tally sheet before the team takes the sheet taken to the Assistant Secretary of State who will add the results of each counting team on a master tally sheet. Observers are encouraged to document the tally sheet result for their candidate and to verify that the team count is accurately entered on the master tally sheet.

19. When all teams counting ballots from the same polling place have completed their counts, the Secretary of State will rule on all challenged ballots from that polling place.
  - a. Each candidate or the principal representative of each candidate shall serve as the observers of the Secretary of State's ruling on challenged ballots.
  - b. The candidate or principal representative may protest the ruling of the Secretary of State on any ballot. A statement of fact documenting the Secretary of State's ruling and the identity of the protesting candidate/party shall be attached to each candidate. The statement of fact sheet shall be marked with a sequential number.
  - c. A tally sheet shall be completed documenting the number of votes for each candidate based on the Secretary of State's rulings on protested ballots.
  - d. Protested ballots shall be separately preserved for appeal.
20. The candidate who requested the recount may cancel the recount at any time during the procedure. If a candidate cancels a recount, the Secretary of State shall publicly announce that the recount has been canceled and the recount shall cease at once. The official results for the election shall be those results announced immediately after the election. Even if the partial recount resulted in different vote totals for some polling places, the official results will remain unchanged.
21. Once a town or ward is to be recounted, the assigned team(s) shall complete the recount of that town or ward before starting to count a different town or ward.
22. The Secretary of State shall maintain a tally sheet showing the election day results and the recount results.
23. The Secretary of State will announce the official winner based on the results of any completed recount.
24. At the end of the recount, if the contestant wishes to appeal the ruling of the Secretary of State on particular ballots, provided the ruling by the Secretary was properly protested, the candidate may appeal to the Ballot Law Commission as provided in RSA 665:8. The appeal must be filed with the Secretary of State within three calendar days of the declaration of the results of the recount.

By Order of

William M. Gardner  
Secretary of State

## NOTICE OF RECOUNT – SAMPLE

{TOWN OR CITY CLERKS' LETTERHEAD}

DATE: {Enter date notice is sent.}

TO: {List names of each recipient – for a recount of an office – list and send notice to every candidate for that office – for a recount of a question list and send notice to every person who signed the request for the recount.}

FROM: {Enter your name and title.}

RE: {Describe the race or question to be recounted, i.e. Recount of ballots cast for State Representative in Merrimack County District No. 38.}

A recount has been requested for {describe the race or question again here}.

This recount of ballots cast will be held on {Day of week, Month, Day, Year} at {describe the location of the recount including the building name, street address including street number if any, room number or name} at {state time}. The recount will continue until finished, unless there is a vote by the Board of Recount to recess or continue the recount, which is publicly announced.

You may be present and may also bring an attorney if you wish. There will be no more than {spell out the number} ({insert Arabic number}) teams counting the ballots in this recount. You are entitled to one observer for each team. If you fail to have one observer for each team present, for each team that you do not have an observer you waive your right to monitor and protest how that team counts each ballot. You and your observers will have one opportunity to observe each ballot and to see how the counting team counts that ballot. If you, or an observer representing you, does not protest how the team is counting a ballot at the moment when it is being counted, you waive the right to protest how that ballot is counted. Protested ballots will be voted on by the Board of Recount.

Appeals to a Court from a decision of the Board of Recount are typically limited to an examination of protested ballots. Therefore, if you do not have an observer for each counting team or if you or your observers do not protest how the counting teams count specific ballots you will have no protested ballots to bring before a Court.

A copy of the standard recount procedures is enclosed. The Board of Recount may vote to adopt special procedures at the recount. If you have further questions regarding the time and location of the recount please contact me at {provide contact information}, if you have questions regarding the recount procedure please contact the moderator at {provide contact information for the moderator}.

## RECOUNT PROCEDURES CHART

Type of Election	Petitions	To Whom and How Initiated	Application Deadline	Fees Minimum*	Who Shall Conduct
State General Election RSA 660:1-6 State Primary Election – Same RSA 660:7 – 9.	None Required	Secretary of State; Apply in Writing If difference in vote between candidate and winner is greater than 3%, candidate must agree to pay the full expense of the recount. RSA 660:2, IV.	No later than Friday following the election	By Office: Governor \$500 U.S. Senator \$500 U.S. Representative \$250 Executive Councilor \$100 State Senator \$50 County Officer \$50 State Representative \$10	Secretary of State
City Election (offices)	Consult City Charter				
Annual Town Meeting RSA 669:30-32.	None Required	Town Clerk; Apply in Writing	No later than Friday following the election	Vote difference between winner and candidate requesting is Less than 1% \$10 Between 1 and 2% \$20 Between 2 and 3% \$40 Greater than 3% \$40 plus costs of recount	Board of Recount (Clerk, Moderator, Selectmen) RSA 669:32.
Annual or Special Meeting – Any Referendum Question RSA 40:4-c	10 legal voters	Town Clerk; Apply in Writing	Within 7 days of meeting	\$10	Board of Recount (Clerk, Moderator, Selectmen)
School Districts – Officers by Official Ballot RSA 671:32	Not Required	School District Clerk; Apply in Writing	No later than Friday following the election	\$10	Board of Recount (School District Moderator, Clerk, School Board)
Constitutional Amendments RSA 660:10; RSA 660:11	100 voters if the question passes or fails by 1%; no provision for recount if question passes or fails by more than 1%	Secretary of State by petition	No later than the 4th Friday following the election.	None	Secretary of State
County Referendum RSA 660:12	50 voters of the county	Secretary of State by petition	No later than 2nd Friday following the election	\$25 paid by person by whom petition is submitted	Secretary of State
Local Questions voted on state ballot. (Sweepstakes, Liquor, etc.) RSA 660:13 – 15.	5 voters of city or town	Secretary of State by petition	No later than 2nd Friday following the election	\$10 per 1000 votes, not to exceed \$50.	Secretary of State

# **SUMMARY OF RULES OF PROCEDURE FOR RECOUNTS**

## **RSA 660**

1. The Secretary of State will operate with two-person teams for recounting.
2. For each two-person team, each candidate may have one observer.
3. Each candidate will be informed as to how many two-person teams will be conducting his/her particular recount.
4. No observer will use pencil or pen while sitting at the recount table.
5. Observers are prohibited from touching the ballots.
6. One member of the two-person team will read the ballot declaring those legal votes apparent from the voter's marks. The second member will place a mark on his/her tally sheet for the candidate(s) receiving a vote. After all the ballots have been read, the totals for each candidate for the town or ward will be determined by adding the marks recorded.
7. If there is a protest of any ballot, it must be made immediately and the Secretary of State will rule on such protest. If his decision is protested, the Secretary of State will attach on the protested ballot a statement of fact.
8. The candidate who requested the recount may cancel same at any time during the procedure, at which time the Secretary of State will publicly announce the candidate's request to cancel the recount and that particular recount will cease at once.
9. Once a town or ward is to be recounted, it shall be completed by the particular team or teams involved before starting another precinct.
10. The Secretary of State will maintain a tally sheet showing the old and new figures and at the completion of a recount will announce the official winner based on the recount figures.
11. At the end of each recount, if the contestant wishes to appeal further, he/she may do so to the Ballot Law Commission under the terms of RSA 665:6.
12. NO SMOKING in recount areas.
13. NO CELL PHONES in recount areas.

William M. Gardner  
Secretary of State

## **XXIX. 2005 & 2006 ELECTION LAW STATUTES CHANGED**

<b><i>2005 Legislative Session</i></b>	
<i>RSA 653:6</i>	<i>Chapter 5 (HB 95) amended</i>
<i>RSA 655:14-b</i>	<i>Chapter 22 (HB 171) amended</i>
<i>RSA 656:6</i>	<i>Chapter 62 (HB 483) amended</i>
<i>RSA 658:29</i>	<i>Chapter 111 (HB 362) amended</i>
<i>RSA 661:8, V</i>	<i>Chapter 25 (HB 277) amended</i>
<i>RSA 671:33</i>	<i>Chapter 49 (HB 97) amended</i>
<b><i>2006 Legislative Session</i></b>	
<i>RSA 40:4-a</i>	<i>Chapter 117 (HB 1174) amended</i>
<i>RSA 49-B:4, V and 49-B:5-a, I</i>	<i>Chapter 22 (HB 581) amended</i>
<i>RSA 652:14-a</i>	<i>Chapter 78 (HB 1173) NEW</i>
<i>RSA 654:12, III</i>	<i>Chapter 300 (SB 403) NEW</i>
<i>RSA 654:31</i>	<i>Chapter 305 (HB 1238) amended</i>
<i>RSA 654:31-a</i>	<i>Chapter 94 (HB 391) amended</i>
<i>RSA 654:31-a</i>	<i>Chapter 305 (HB 1238) amended</i>
<i>RSA 654:36-a; 36-b</i>	<i>Chapter 243 (HB 1567) NEW</i>
<i>RSA 654:45, VI</i>	<i>Chapter 305 (HB 1238) amended</i>
<i>RSA 655:47, II</i>	<i>Chapter 72 (HB 1125) amended</i>
<i>RSA 655:81, I</i>	<i>Chapter 32 (HB 1122) amended</i>
<i>RSA 656:1-a</i>	<i>Chapter 23 (HB 1118) NEW</i>
<i>RSA 657:1</i>	<i>Chapter 136 (HB 221) amended</i>
<i>RSA 657:4</i>	<i>Chapter 136 (HB 221) repealed and re-enacted</i>
<i>RSA 657:7, II(a)</i>	<i>Chapter 136 (HB 221) amended</i>
<i>RSA 657:21-a</i>	<i>Chapter 166 (HB 380) NEW</i>
<i>RSA 659:9-a</i>	<i>Chapter 78 (HB 1173) NEW</i>
<i>RSA 659:13</i>	<i>Chapter 300 (SB 403) amended</i>
<i>RSA 659:30</i>	<i>Chapter 94 (HB 391) amended</i>
<i>RSA 659:34, II</i>	<i>Chapter 68 (HB 1222) amended</i>
<i>RSA 659:34-a</i>	<i>Chapter 68 (HB 1222) NEW</i>
<i>RSA 659:40-a; 42</i>	<i>Chapter 305 (HB 1238) amended</i>
<i>RSA 659:101</i>	<i>Chapter 94 (HB 391) amended</i>
<i>RSA 660:5; 11; 12; 14</i>	<i>Chapter 41 (HB 1147) amended</i>
<i>RSA 661:8, II</i>	<i>Chapter 32 (HB 1122) amended</i>
<i>RSA 664:3, I</i>	<i>Chapter 97 (HB 1172) amended</i>
<i>RSA 664:11</i>	<i>Chapter 57 (HB 1217) amended</i>
<i>RSA 664:17</i>	<i>Chapter 273 (HB 349) amended</i>
<i>RSA 669:26; 27, III</i>	<i>Chapter 136 (HB 221) amended</i>
<i>RSA 669:32</i>	<i>Chapter 41 (HB 1147) amended</i>



## **XXX. OTHER FORMS**

### **ELECTION DAY REGISTRATION CHECKLIST ADDENDUM**

Town of \_\_\_\_\_

Date: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_

CHECK	PARTY	NAME	ADDRESS

# AUTHORIZATION CARD OF NEW VOTERS

Town of \_\_\_\_\_

**Instructions.** Applicants for registration as a voter on election day must complete this form. Once your application to be registered as a voter has been approved, a Supervisor of the Checklist will sign this form. Take this form to the Voter Check-In table. A ballot Clerk will add your name to the checklist and will issue you a ballot(s).

**(For hand count towns only).** The ballot clerk will hand t his card back to you with the ballot. Keep it with you when you go to the voting booth to mark your ballot(s). When you are finished marking your ballots fold the ballot so that your votes cannot be seen and go to the check-out table. Hand this form to the town clerk or a ballot clerk who will add your name to the checklist used to check voters out. Then take your ballot to the moderator who will be positioned by the ballot box. Hand the ballot to the moderator, who will drop it in the ballot box.

This card authorizes the addition of the person named herein to the checklist as a new voter who has registered on election day:

Date: \_\_\_\_\_

Print your name here: \_\_\_\_\_

Print the physical address of your voting domicile: \_\_\_\_\_

\_\_\_\_\_

If this is a Primary Election:

Print the name of the party you affiliate with: \_\_\_\_\_

Sign the form: \_\_\_\_\_

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## FOR OFFICIAL USE ONLY

The person named above has been approved by the Supervisors of the Checklist as a new voter.

Signed \_\_\_\_\_  
(Supervisor of the Checklist)

## NOTICE OF REMOVAL: SAMPLE

*(Letterhead or Insert proper return address)*

TO: (Name of Voter)

FROM: Supervisors of the Checklist

DATE:

RE: Voter Registration

It has come to our attention that you are no longer a resident of *{insert name of your town}*. Therefore, as required under State Statute, RSA 654:44, you are hereby notified your name shall be removed from the voter checklist within thirty (30) days of the above date, unless we are notified by you that you are currently a resident of *{insert name of your town}*. If such removal is incorrect, please advise the Board of Supervisors of the Checklist in writing or in person at the above address prior to (insert date 30 days from the above date) which will be the next scheduled session for correction of the checklist. You may make this notification by completing the form below and returning this notification to the Board of Supervisors of the Checklist.

Date \_\_\_\_\_

Print your name: \_\_\_\_\_.

Print your current address:

Street: \_\_\_\_\_

P.O. Box or mailing if different: \_\_\_\_\_

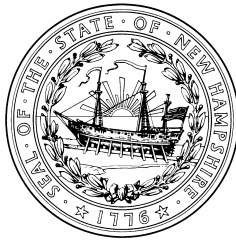
Town/City: \_\_\_\_\_

New Hampshire Zip \_\_\_\_\_ - \_\_\_\_\_

I acknowledge that I have read and understand the qualifications for voting and do hereby swear, under the penalties for voting fraud set forth below, that I am qualified to vote in the above-stated city/town.

Signature: \_\_\_\_\_

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5000.



**STATE OF NEW HAMPSHIRE  
PRIMARY PETITION  
(RSA 655:19-C, III, 21, 22-A, 23)**

I do hereby join in a petition for the printing on the primary ballot of the name of \_\_\_\_\_

whose domicile is in the city (town) of \_\_\_\_\_ (ward) \_\_\_\_\_

street and number \_\_\_\_\_,

in the county of \_\_\_\_\_, for the office  
of \_\_\_\_\_

to be voted for on Tuesday, the 12th day of September, 2006, and certify that I am qualified to vote for a candidate for said  
office, that I am a registered member of the \_\_\_\_\_

party, and am not at this time a signer of any other similar petition for any other candidate for the above office; that my  
domicile is in the city (town) of \_\_\_\_\_ (ward) \_\_\_\_\_ street and  
number \_\_\_\_\_

in the county of \_\_\_\_\_.

I certify that to my knowledge the above-named candidate is not a candidate for incompatible offices as defined in RSA 655:10  
and that he or she is not a federal employee which makes him or her ineligible to file as a candidate for this office. I further  
certify that I believe the above-named person is especially qualified to fill said office.

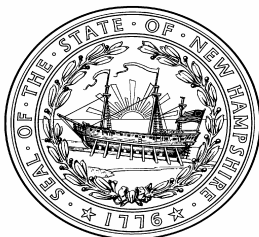
*I hereby swear, under the penalties for voting fraud set forth below, that the information above is true and correct to the best of  
my knowledge and belief.*

\_\_\_\_\_  
Signature of Voter

\_\_\_\_\_  
Print Voter's Name

*In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a  
class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently  
registering to vote or voting is subject to a civil penalty not to exceed \$5,000.*

Number of primary petitions required: governor - 200; representative in Congress - 100; executive councilor and county officer -  
50; state senator - 20; state representative - 5



# STATE OF NEW HAMPSHIRE NOMINATION PAPER

(For State General Election)  
RSA 655:40 – 45)

The subscriber, a registered voter in the State of New Hampshire, hereby makes the following nomination to be voted for at the state general election to be held on **November 7, 2006**, and requests that the name of said candidate be placed upon the official ballot to be used in said election as a candidate of the following Political Organization \_\_\_\_\_.

Candidate's Name \_\_\_\_\_

Candidate's Domicile \_\_\_\_\_  
(street) (town or city) (ward) (zip)

For the Office of \_\_\_\_\_ District No. \_\_\_\_\_

## RSA 655:45

No person shall falsely make or file or knowingly deface or destroy any nomination paper, or any part thereof, or sign any nomination paper contrary to the provisions of law knowing the same, or any part thereof, to be falsely made or suppress any nomination paper any part thereof, which has been duly filed. Whoever knowingly violates any of the provisions of this section shall be guilty of a misdemeanor if a natural person or be guilty of a felony if any other person.

Voter's Signature \_\_\_\_\_

Print Voter's Name \_\_\_\_\_

Voter's Domicile \_\_\_\_\_  
(street address) (town or city) (ward)

Voter's Mailing Address \_\_\_\_\_  
(street address) (town or city) (ward)

## CERTIFICATE OF SUPERVISORS OF THE CHECKLIST

The undersigned, a **MAJORITY** of the **SUPERVISORS OF THE CHECKLIST** (or Registrars of Voters), hereby certify that the voter signing this nomination paper is a registered voter in the town/ward of

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ The signer of this paper is **NOT** a registered voter in this town or ward Date signed \_\_\_\_\_

**RSA 655:41, II.** The city clerk may certify that the signer is a registered voter, if in a city.

### Filing Deadlines:

**August 9, 2006** – Last day to submit signed nomination papers to Supervisors of the Checklist in town or city  
**August 30, 2006 5:00 p.m.** – Supervisors must have nomination papers certified for candidates and organizations  
**September 6, 2006 5:00 p.m.** – Last day to file certified nomination papers with Secretary of State's Office

PLEASE PRINT OR TYPE

## NEW HAMPSHIRE VOTER REGISTRATION FORM

RSA 654:7

1. LAST NAME (including suffix if any)		FIRST NAME		FULL MIDDLE NAME		FOR OFFICIAL USE
2. RESIDENCE ADDRESS (Street & House (Apt.) Number )		TOWN OR CITY		City Ward	ZIP CODE	
3. MAILING ADDRESS (If different from residence address)		TOWN OR CITY		STATE	ZIP CODE	
4. PLACE OF BIRTH (Town/City and State)		COUNTRY (If not USA)		DATE OF BIRTH		
5. IF NATURALIZED CITIZEN, GIVE NAME OF COURT WHERE NATURALIZED (Town/City and State)				DATE NATURALIZED		
6. PLACE LAST REGISTERED TO VOTE ( Street & House (Apt.) Number )		(Town or City & Ward )		( State and Zip Code)		
7. NAME UNDER WHICH PREVIOUSLY REGISTERED, IF DIFFERENT				8. PARTY AFFILIATION (if any)		
9. DRIVER'S LICENSE NUMBER	STATE (If not NH)	IF NO VALID DRIVER'S LICENSE, PROVIDE THE LAST FOUR DIGITS OF YOUR SOCIAL SECURITY NUMBER				

## AFFIDAVIT

**My name is \_\_\_\_\_ . I am today registering to  
vote in the city/town of \_\_\_\_\_, New Hampshire.**

I understand that to vote in this city/town, I must be 18 years of age, I must be a United States citizen, and I must be domiciled in this city/town.

I understand that a person can claim only one state and one city/town as his or her domicile at a time. A domicile is that place, to which upon temporary absence, a person has the intention of returning. By registering or voting today, I am acknowledging that I am not domiciled in any other state or any other city/town. I understand that if I am domiciled in another state or city/town, I may be entitled to vote in elections held within that state or city/town by absentee ballot.

In declaring New Hampshire as my domicile, I am subject to the laws of the State of New Hampshire which apply to all residents, including laws requiring me to register my motor vehicles and apply for a New Hampshire's driver's license within 60 days of becoming a resident.

In declaring New Hampshire as my domicile, I realize that I may be forfeiting benefits or rights, including the right to vote in another state.

If I have any questions as to whether I am entitled to vote in this city/town, I am aware that a supervisor of the checklist or registrar of voters is available to address my questions or concerns.

I acknowledge that I have read and understand the above qualifications for voting and do hereby swear, under the penalties for voting fraud set forth below, that I am qualified to vote in the above-stated city/town on this day, and if registering on election day, that I have not voted and will not vote at any other polling place this election.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

Received by \_\_\_\_\_

Approved by \_\_\_\_\_  
SUPERVISOR OF CHECKLIST/REGISTRAR OF VOTERS



***In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.***

## VOTER CHALLENGE FORM MODEL

Any voter may be challenged at any time prior to the moderator dropping the voter's ballot into the ballot box or the voter feeding the ballot into a ballot counting voting machine. Only persons who are registered in the town or ward, challengers appointed by a political party bearing a letter of authorization, or challengers appointed by the Attorney General bearing proof of appointment may challenge a voter. The Moderator requires all challenges to be in writing. If you wish to make a challenge notify the Moderator immediately, then complete this form.

### **INFORMATION ON THE PERSON MAKING THE CHALLENGE**

Name of Person Making the Challenge:

\_\_\_\_\_  
Last Name

\_\_\_\_\_  
First Name

\_\_\_\_\_  
Middle Name/initial

\_\_\_\_\_  
If person making a challenge is a voter: Physical Address – Street Name & Number

\_\_\_\_\_  
If person is a political party or Attorney General appointee: mailing address & phone number

**INFORMATION ON THE VOTER BEING CHALLENGED:** The person making the challenge should complete the following:

Name being used by the voter who you wish to challenge:

\_\_\_\_\_  
Last Name

\_\_\_\_\_  
First Name

\_\_\_\_\_  
Middle Name

**GROUND FOR THE CHALLENGE:** The person making the challenge must indicate the ground on which the challenge is made. (check all grounds that apply).

\_\_\_ The person seeking to vote is not the individual whose name he or she has given

\_\_\_ The person seeking to vote has already voted in the election at (name polling place) \_\_\_\_\_ at approximately (state time if known) \_\_\_\_\_.

\_\_\_ The person seeking to vote is disqualified as a voter by conviction of a willful violation of the elections laws (state offense, Court, and date of conviction)

\_\_\_ The person seeking to vote is under 18 years of age.

\_\_\_ The person seeking to vote is not a United States Citizen.

\_\_\_ The person seeking to vote is not domiciled in the town or ward where he or she is seeking to vote (state persons true domicile – street address and town/city) \_\_\_\_\_

\_\_\_ The person seeking to vote is a convicted felon who is currently sentenced to incarceration (state name of institution person is on work release or escaped from)

\_\_\_ This is a primary and the person seeking to vote in the (state political party name) \_\_\_\_\_ is not a declared member of the party he or she claims to be affiliated with.

**TO BE COMPLETED BY THE MODERATOR:** Ruling on the challenge:

If the ground at issue is age, citizenship, or domicile: The supervisors of the checklist have ruled that the challenged voter is: ☐ qualified as a voter; ☐ not qualified as a voter.

The moderator rules on challenges based on other grounds. The Moderator rules that the challenge is: ☐ well grounded; ☐ not well grounded.

If it is ruled that the voter is not qualified or that the challenge is well grounded, the challenged person may vote only if they complete and swear to a challenged voter affidavit.

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